Extradition Law and practice - Concept and famous cases

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Concept and Famous Cases

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Preface

In 2011, I was instructed by a firm of English solicitors to serve as an expert witness in relation to an extradition case pending before Westminster Magistrates' Court. Although the instructions were complex and the deadline was very tight, I immediately – and gladly – realised that an extradition case would be a stimulating test for my passion for comparative law.

The challenge was to explain the domestic laws of Italy to foreign lawyers and judges, and I felt I was not equipped to do it properly. Some 'domestic' assumptions that I had always taken for granted had to be reviewed, the legal terminology of my academic writing had to be adjusted, and my communication skills had to quickly improve. In the years that followed, on numerous occasions I found myself wondering why a legal concept that appears rock-solid in a domestic realm may suddenly become confused, blurred – sometimes plainly illogical – when one tries to report it to a foreign judicial authority.

It was then that I also became conscious that international extradition was a neglected subject in the curriculum of legal studies all over the world. More importantly, it seemed that no book or essay had been published for those who wanted to learn the basic principles of international extradition and the model procedure of an international extradition case.

The mission of this work is precisely to reach out to law students, academic lawyers and legal practitioners who wish to approach international extradition as a subject for the very first time in their professional career. Part A consists of an introductory article on the concept of extradition, the typical course of an extradition proceeding and the most commonly invoked refusal grounds. Part B reports thirty-five notable extradition (and rendition) cases that cover most of the jurisdictions of the world and most of the legal issues that are key to this relatively unknown area of law and practice. For reference, the appendix includes the 1990 United Nation model extradition treaty, a 1996 bilateral treaty on extradition (between France and the USA) and the 2002 Council Framework Decision on the European Arrest Warrant that replaced the older extradition scheme in the European Union.

My thanks go out to the participants of the four editions of the International Seminar on International Extradition and the European Arrest Warrant that met in Oxford, UK (in 2016 and 2017) and Sarnico, Italy (in 2018 and 2019) to discuss with me recent developments in extradition laws.

I would appreciate comments and observations and would be happy to try and answer questions that readers might have (stefano.maffei@gmail.com).

Stefano Maffei

International Extradition: Concept, Procedure and Refusal Grounds

1 Introduction

The purpose of this paper is to introduce international extradition to law students and legal practitioners irrespective of the jurisdiction in which they operate. This is not an easy task, as international extradition is a rather complex subject, which involves a variety of areas of law including criminal law, criminal procedure, international law, administrative law, and the 'constitutional' arrangements for the protection of human rights.

Universities and Law Schools around the world generally do not teach international extradition as a subject, and postgraduate seminars and courses on this topic are extremely rare.[1] Although several famous extradition cases have been in the spotlight in the last few decades (Augusto Pinochet, Julian Assange, and Roman Polansky to mention just a few), this subject still lacks proper academic standing. As a result, with the exception of the UK and to some extent The Netherlands,[2] most countries still do not have an established group of extradition experts or lawyers. This lack of 'shared knowledge' makes it rather difficult for legal practitioners (researchers, lawyers, judges) of different jurisdictions to meaningfully discuss global trends in international extradition.

Against this background, this paper aims at offering a common *language* for those who are interested in international extradition by laying down its foundational concepts. This paper further discusses the sources of extradition law, the basic course of a typical extradition case, the offenses that are extraditable, and what might bar surrender in certain cases.

2 The Concept of 'International Extradition'

To understand the concept of extradition, one should start from the assumption that the principle of sovereignty a) provides countries with sole authority to use force on people within their borders and b) limits a country's

[1] Since 2016, an international Extradition Expert Group (EEG) has met once a year to discuss current developments in extradition laws around the world. Worcester College-University of Oxford hosted the meetings in 2016 and 2017 while the group met in Sarnico (Italy) in June 2018 and June 2019. You can follow the EEG activities and download the press releases of the 2016, 2017, 2018 and 2019 meetings at www.internationalextradition.org.

[2] In the UK the legal profession is extremely specialized and international extradition is a well-established area of practice for both solicitors and barristers. All extradition cases are dealt with by Westminster Magistrates' Courts which accounts for a degree of this specialization. Also in The Netherlands all extradition cases pass through a single court (the District Court of Amsterdam – *Rechtbank Amsterdam*) and that court maintains an official list of lawyers that are the only ones admitted to represent requested persons in extradition proceedings. In most other countries, however, first instance extradition proceedings are conducted before the local courts in the district or regions where the sought person is located and usually arrested (see below, §5).

obligation to surrender an alleged criminal to a requesting foreign country under international law. Surrender is an alternative word for 'extradite' and it is often used as a synonym in this paper.

Justice and notions of international cooperation have always led countries to cooperate, to some extent, in order to successfully process extradition requests. Instead, cases of extraordinary 'renditions' – when the authorities of a foreign country apprehend the person within the border of another country without going through a legal process – are clearly illegal and must be treated as offenses of kidnapping.[3]

The first matter to address here is the notion of international extradition. International extradition is the legal method that forbids those persons, either suspected of or convicted of a criminal offense, from evading justice.[4] It was once defined as:

[T]he legal process based on a treaty, reciprocity, comity, or national law, whereby one [country] delivers to another, a person charged or convicted of a criminal offense against the laws of the requesting country or in violation of international criminal law in order to be tried or punished in the requesting country with respect to the crime mentioned in the request.[5]

Extradition is typically a multi-faceted process whereby one country (the *requested or executing country*), at the request of another country (the *requesting or issuing country*), grants to the latter the return of a person to face prosecution, stand trial, or serve out a given sentence.[6] In theory, extraditable individuals will include those charged (or suspects awaiting a charge) with a criminal offense while proceedings are pending against them, those that have been tried and

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3 The practice of extraordinary (illegal) renditions is the abduction and extrajudicial transfer of a person from one country to another. A notable rendition was the abduction by CIA agents, with the cooperation of Italian officials, of the Egyptian imam Abu Omar, who had been granted political asylum in Italy, and his subsequent transfer to Egypt, where he was held in secret for several months. In the 2016 case *Nasr and Ghali v. Italy*, the European Court of Human Rights found a violation of Article 3, 5, and 8 of the European Convention on Human Rights.

4 Extradition has ancient origins, and its first recorded case dates back to the 13th century BC, when an Egyptian Pharaoh (Ramesses II), negotiated an extradition treaty with Hittite King, Hattusili III; see D. Stigall, *Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law*, in *Notre Dame J. Int'l & Comparative Law*, 2013, vol. 3, pag. 19.

5 *See* C. Bassiouni, *International Criminal Law*, in *Encyclopedia of Crime and Justice*, 1983, Kadish, pag. 908.

6 'Extradition is founded on the broad principle that it is to the interest of civilized communities that crimes acknowledged as such should not go unpunished; and it is part of the comity of nations that one State should assist another to bring to justice persons committing such crimes'. Lord Russell C.J. in *In re Arton* [1896] 1 Q.B. 108 at pag. 111, 112.

convicted *in absentia*,[7] and those who have escaped an arrest warrant or other incarceration order at some point during the process.[8]

A distinction must be drawn between international extradition for the purpose of prosecution (often called *extradition for accusation*) and international extradition for the purpose of executing sentence (*extradition for conviction*). This distinction will become relevant when I discuss the stages of an extradition case in §5.

Finally, the term extradition in this paper bears a meaning that is different from the one in use in the United States of America. In the USA, the term extradition also describes the process of inter-state extradition amongst the 50-States. Although in its early years the inter-state rendition process resembled, in some ways, the surrender between independent countries,[9] this is no longer the case and the USA's process of 'domestic extradition' falls entirely outside the scope of this paper. The following sections deal exclusively with 'international extradition' between independent sovereign countries.

3 Sources of Extradition Law

This section focuses on the very first challenge of international extradition, that is to identify the rules governing the process to determine whether a *person sought* (sometimes referred to also as 'requested person') should be surrendered, or not.

First, the most common sources of extradition rules are bilateral international treaties aimed at enhancing cooperation in criminal matters. Bilateral treaties governing extradition are signed primarily because countries have a shared interest in cooperating in order to ensure that their sovereignty will remain unscathed. The purpose of these bilateral treaties is both to protect sovereignty and to guarantee that crimes throughout countries will not go without judicial proceedings. Preambles of these bilateral treaties are usually phrased as follows:

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7 On the topic of trials in absentia see below, §7.6.

8 Although the term 'fugitive' is often used in the context of extradition, this paper generally avoids it. This is because the term 'fugitive' implies the idea of a person (illegally) fleeing a country. There are however circumstances where a country seeks extradition for a person that was legally allowed to exit from the requesting country at the relevant time. Further, there may be instances where the person is sought for surrender by a country despite the fact he or she was never physically there. In theory, extradition can be granted if the requesting country has jurisdiction over a crime even if such crime had allegedly been committed by a person that was acting illegally while abroad.

9 For a comprehensive analysis of the USA interstate extradition process see A. Willems, *Extradition on The Two Sides Of The Atlantic: The U.S. Model As Blueprint For The European Arrest Warrant?*, in *Criminal Law Forum*, 2016, vol. 27, pag. 443-493.

The Government of [...] and the Government of [...], recognizing their close cooperation in the repression of crimes; desiring to make such cooperation even more effective; seeking to conclude a new treaty for the reciprocal extradition of offenders; have agreed as follows...[10]

Although in practice the clauses of bilateral treaties may significantly vary, a certain degree of standardization exists across the world,[11] due to common practice and the overall aims to ensure the exercise of sovereign power, crime control across jurisdictions, and procedural fairness to the sought persons. The United Nations also published in 1990 a Model Treaty on Extradition, which is available for reference in the appendix of this book.[12] Generally, bilateral treaties contain lists of extraditable offenses, mandatory and optional refusal grounds, as well as clauses for provisional arrest and surrender, in case extradition is eventually ordered. Further, it is relatively common for extradition treaties to overlook minor offences (for example, offences punishable with less than one year in prison) as the complexities of an extradition proceeding make it generally unfit for petty crimes.[13] Normally, a single bilateral treaty governs all extradition cases between the concerned countries, which is criticized by those who argue that separate treaties should be enacted for specific crimes or group of crimes.[14]

Secondly, rules on international extradition may be found in certain multinational extradition treaties, the most notable being the 1957 European Convention on Extradition. The Convention became effective in 1960 and had 50 State parties (all the countries of the Council of Europe, Israel, South Africa and South Korea).[15] Further, in 2002 the EU has replaced former international

[10] This provision is taken from the 1983 bilateral treaty governing extradition between Italy and the USA.

[11] As an example, I selected the 1996 bilateral treaty governing extradition between France and the USA and I included in the Appendix of this book for reference and consultation.

[12] In 1990, the UN General Assembly drafted a Model Treaty on Extradition on the assumption that 'the establishment of bilateral and multilateral arrangements for extradition will greatly contribute to the development of more effective international co-operation for the control of crime, and 'conscious that in many cases existing bilateral extradition arrangements are outdated and should be replaced by modern arrangements which take into account recent developments in international law.'

[13] One-year imprisonment seems to be the normal threshold for the bilateral extradition treaties signed by the USA. See, for example, the bilateral treaty with Italy (1983), Hungary (1994) and Czech Republic (2006). Similarly, 'an offence shall be an extraditable offence if it is punishable under the laws of both Parties by imprisonment for a period of not less than one year' according to the 2007 treaty governing extradition between Australia and Malaysia.

[14] 'By being more specific in the drafting of a treaty, countries can better evaluate what their interests are, what is best for their citizens, and what type of agreement they should enter into to benefit their country without jeopardizing foreign relations', according to M. Lim, *Will Amanda Knox Go Back to Italy: An Examination of Extradition Law and the Necessity of Repurposing Agreements in the Fight against Transnational Crime*, in *Tul. Journal International and Comparative Law*, 2014, vol. 23, pag. 205.

[15] See the 1957 European Convention on Extradition for a full list of the thirty-two articles agreed upon. The treaty was signed in Paris on December 13, 1957 and is available in both English and French in the archives of the Council of Europe.

extradition rules with the European Arrest Warrant scheme (hereinafter, briefly, the 'EAW scheme').[16]

Both bilateral and multilateral extradition treaties are sources of international law and thus subject to the rules of interpretation of Article 31 of the Vienna Convention.[17] Interpretation of a bilateral treaty on extradition is critical,[18] especially since it is not uncommon for the requested country (or its judicial authorities) to openly or implicitly criticize the manner in which the requesting country handles (or may be handling) domestic proceedings against the person sought. Concepts such as 'fairness,' 'fundamental rights,' or 'speedy proceeding' are often the sources of misunderstanding and clashes of interpretation. Also, standards of interpretation vary when the legal question at issue is one of 'international law' (which governs the interpretation of the clauses of a treaty) versus 'domestic criminal law' (which governs the relevant proceedings against the person sought in the requesting country). Unlike international law's more flexible approach to interpretation, criminal law typically requires a very strict interpretation standard, such as in the reading of the criminal conducts listed in the treaty as extraditable offenses.

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[16] See the Council Framework decision 2002/584/JHA of 13th June 2002 on the European Arrest Warrant and the surrender procedures between Member States as amended by the Framework Decision 2009/299/JHA. Given its importance in current extradition practice, this piece of legislation is available in the Appendix of this book. The 2002 EAW scheme was originally designed as a 'fast-track' extradition system that gives full and exclusive authority to the judicial authorities of the Member States, while no role is assigned to the executive authorities. Further, double criminality is partly abolished (see below, §7.1) and the requesting country no longer has to establish a *prima facie case* against the person sought in extraditions for the purpose of prosecution. For an early critique of the EAW scheme see S. Alegre- M. Leaf, *Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study – The European Arrest Warrant*, in *European Law Journal*, 2004, vol. 10 pag 200. As early as in 2011 a European Committee Report highlighted the flaws of the EAW scheme, including issues of correct transposition into domestic law, correct application, proportionality, and procedural unfairness (for a comprehensive analysis of the unique features of the EAW scheme see L. Klimek, *European Arrest Warrant*, Springer, 2015).

[17] Article 31, 1969 Vienna Convention on the Law of Treaties.

[18] Since bilateral treaties serve to facilitate an expedited process for extradition, the treaty should be interpreted freely to further the underlying purpose of the treaty. Lord Russell in *In Re Arton* stated, 'treaties ought to receive a liberal interpretation, which means no more than that they should receive their true construction according to their language, object, and intent.' The UK House of Lords held in *Government of Belgium v. Postlewaite* [1987] 2 All E.R. 985 (H.L.). that a court should avoid interpretation of the treaty that would "hinder the working and narrow the operation of most salutary international arrangements," unless the language specifically states otherwise. However, in *Postlewaite*, Lord Bridge ultimately stated interpretation should look for the underlying intention of the extradition treaty. In *Melia v. United States*, the court interpreted the terms beyond their literal meaning in order to prosper the spirit and intent of the treaty. [1896] 1 Q.B. 509; [1987] 2 All E.R. 985 (H.L.); *Melia v. United States*, 667 F.2d 300 (2nd Cir. 1984).

Both bilateral and multilateral treaties are generally ratified and transposed into the domestic law of each country through appropriate *ad hoc* statutes.

Thirdly, rules on international extradition may be found in domestically-enacted legislation on extradition law in many countries.[19] To put it simply, this domestic legislation is designed to supplement the provisions within a treaty, or to operate in cases where there is no international agreement[20] governing extradition with a given country.[21] In some countries, when the rules of domestically

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[19] Some countries have enacted specific *ad hoc* statutes to regulate international extradition: eg: the UK (Extradition Act 2013); Canada (Extradition Act 1999), the USA (Uniform Criminal Extradition Act of 1926). In others, domestic rules on international extradition may be found within broader statutes (eg in Germany the AICCM – Act on International Cooperation in criminal matters, 2012, in Switzerland the Federal Act on Mutual assistance in criminal matters, 1981) or the Code of criminal procedure (eg. arts. 696-722 Italian criminal procedure code).

[20] Extradition without a formal treaty is theoretically possible, as international law allows countries to negotiate extradition without a formal identified treaty. When there is no formal treaty between two States, it does not mean that a person cannot be detained pursuant to an extradition request or t cannot be extradited. Without a treaty in force, countries revert to handling extradition requests as diplomatic negotiations. However, the final decision to surrender may be subject to judicial review if the domestic statutory or constitutional provisions require it. International extradition without a treaty can either simplify or further convolute the extradition process. When there is no extradition treaty in force, it is hard to predict how the countries will handle the process. Requests can sometimes take years to resolve and the countries could likely have processed the request more efficiently if there had been an extradition treaty in place. A notable example of an extradition request without a formal treaty is that of Edward Snowden (see below, footnote n. 21) Although in some instances negotiations between the two countries can devolve into an international power struggle, most countries cooperate so that they remain within the requesting state's good graces and promote constructive and peaceful relations. Occasionally, the requested country takes the opportunity of an extradition request to submit a counter-request. That usually comes in the form of the requested country desiring extradition for one or more of their fugitives located within the requesting country. Recently, *ad hoc* extradition schemes operated by the UK became the focus of world attention in connection with the 2019 draft extradition bill in Hong Kong, which triggered unprecedented mass protests in the city. Case specific extradition arrangements, however, are typically used only sparingly and in exceptional circumstances (in the example, the UK only used it in respect of a Rwanda's request for genocide, a case of murder in Bermuda and in a manslaughter case in Taiwan).

[21] In the extradition case involving Edward Snowden (reported in the list of notable cases in Part B of this book), there was no extradition treaty in force between the USA and China. However, a request for surrender was issued by the USA pursuant to an agreement with Hong Kong. The *USA-Hong Kong Agreement for the Surrender of Fugitive Offenders*, signed shortly before Hong Kong transitioned from the UK to China was still in effect under the authorization of China. The agreement stipulated that both the USA and Hong Kong agreed to surrender fugitives when the principle of dual criminality applied, but either party retained the right to refuse surrender in cases of certain politically motivated charges. Furthermore, China retained the right to veto a surrender if it believed the action would harm China's defense, foreign affairs or essential public interest or policy. Edward Snowden was not extradited.

enacted statutes on extradition are more favourable to the person sought they prevail over those of international treaties.[22]

4 Domestic and Supra-National Court Decisions on Extradition

Now that the sources governing international extradition have been identified, it is time to explain where one could find relevant precedents on matters of extradition law across the world.

As it will be explained in some details in §5, the legality of extradition requests is typically challenged before the domestic courts of the requested country. It is before those courts that the proper interpretation of the applicable extradition provisions is in question. Thus, rulings on the legality of extradition cases are typically issued by the domestic courts of the requested countries, not by international or supra-national courts. For example, the courts of the United Kingdom had once to determine whether a Swedish prosecutor that issued an EAW was a 'judicial authority' under the EAW scheme.[23] Similarly, one would reasonably expect domestic courts to determine whether the 'double criminality' concept in a given case is to be read *in abstracto* or *in concreto*,[24] what is the meaning of the 'rule of speciality' and whether the evidence brought forward in an extradition request is sufficient to mount a 'prima facie case' against the person sought in an extradition for accusation. As one would expect, my reference to the 'domestic courts' is inclusive of the constitutional or supreme courts[25] of the requested countries, where questions of law and – if necessary – constitutional arguments (i.e. in case of a flagrant denial of justice, excessive punishment, human right violation, etc...) are resolved with a final judgment.

While extradition cases are primarily litigated before 'domestic' judicial authorities, one should not overlook that opinions on extradition matters may also be issued by two 'supra-national' courts in the context of the Council of Europe (the European Court of Human Rights) and the European Union (the European Court of Justice).

On the one hand, extradition cases may trigger the jurisdiction of the European Court of Human Rights if the person sought argues that an extradition order (issued or executed by a State party to the Council of Europe) would expose him to a violation of one of the rights and freedoms listed in the

[22] This is the rule in Switzerland, for example, as well as in many other European countries.

[23] See the case involving Julian Assange, reported in the list of notable cases in this Part B of this book.

[24] More on this below, in §7.1.

[25] The distinction Constitutional court v. Supreme court only refers to jurisdictions that operate a Constitutional court (for the constitutional review of statutes) and an entirely separate court of last resort (as it is the case in Italy, Germany, France, etc). In the USA and the UK, the above distinction clearly does not apply and extradition cases are only very rarely heard by the national Supreme Court.

European Convention on Human Rights.[26] This is despite the fact that a 'right not to be extradited' is not as such protected by the European Convention. Instead, Art. 5 para 1 lett. f) of the European Convention explicitly permits 'the lawful ... detention of a person against whom action is being taken with a view to ... extradition.[27]' Whether the decisions of the Strasbourg court have an immediate binding effect on the jurisdictions involved is a complex question, which I am not going to discuss in this paper.

On the other hand, a major role is played by the European Court of Justice (ECJ) in the EAW scheme, especially when a question on the interpretation of the relevant European legislation is referred for a so called 'preliminary ruling'. Over the last decade, the ECJ clarified the meaning of several crucial concepts of the EAW Framework decision,[28] including the terms 'arrest warrant,' 'judicial decision,' and 'issuing judicial authority.[29]' However, it must be noted that while rulings of the ECJ give the 'authentic' interpretation of the EAW legislation, the final authority on the decision to extradite rests with the judicial authorities of the countries that are parties to the EAW scheme.

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[26] One of the most notable extradition cases before the European Court of Human Rights was *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161). The Court held that the UK Secretary of State's decision to extradite the applicant to face charges of murder of first degree in Virginia would, if implemented, give rise to a breach of Article 3 of the European Convention on Human Rights (prohibition of torture) given that the charges involved capital punishment. For a Strasbourg case concerning the legitimacy of extradition in case of a sentence of life in prison with no prospect of release see below §7.6.

[27] It is the settled case-law of the European Court of Human Rights that extradition by a country member of the Council of Europe may give rise to an issue under Article 3 of the European Convention on Human Rights (freedom from torture), and hence engage the responsibility of that country under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the requesting country (see *Soering v. the United Kingdom*, §§ 89-91). Surrender in such cases 'would hardly be compatible' with the 'common heritage of political traditions, ideals, freedom and the rule of law' to which the Preamble of the European Convention on Human Rights refers.

[28] The legislation governing the EAW scheme in its current version (including the 2009 amendment) is available for reference and consultation in the Appendix of this book.

[29] EUROJUST maintains an updated yearly report of the case law of the ECJ on the European arrest warrant. The 2018 version is available on the EUROJUST website.

5 The Typical Course of an Extradition Case

It is now time to describe the typical course of an international extradition case,[30] irrespective of whether it may be for accusation or conviction purposes.[31]

Extradition cases begin with a request for surrender submitted by the requesting country to the requested country. In practice, the Ministry of Justice (or other equivalent authority) of the requested country will receive the requests for extradition submitted by its foreign counterpart. A formal request is typically issued *after* the person sought is located in the territory of the requested country (subjects are often located when they attempt to enter a country, at a border checkpoints or when showing passport or ID at ports, airports or hotels). There are significant 'pre-extradition procedures' relating to the investigations through which a person sought is located (Red Notice Interpol, police surveillance activities and searches, etc.) but those are beyond the scope of this paper.

The first key moment in the extradition process is when the person sought is located, identified, provisionally arrested,[32] and brought before a local judge. Once the person sought is arrested, the requested country must receive the formal extradition request within a specified and relatively short timeframe.[33]

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[30] The process described in this section does not fit the European Arrest Warrant scheme, in which the role of the executive has been significantly reduced and the ultimate decision on extradition rests solely on the judicial authorities of the State parties.

[31] Please note that proceedings in case of extradition for conviction may sometimes take a different turn if the bilateral treaty (or other rules governing extradition) allow the convicted persons to serve their sentence in the requested country, rather than in the requesting country. In Article 4-6 of the 2002 EAW Council Framework Decision, for example, it is stated that the executing judicial authority may refuse to execute the EAW 'if the European arrest warrant has been issued for the purposes of execution of a sentence .... where the person is staying in, or is a national or resident of the executing Member State and that State undertakes to execute the sentence .... in accordance with its domestic law'.

[32] Bilateral extradition treaties almost invariably include a provisional arrest clause, designed to quickly confer jurisdiction to the judicial authorities of the requested country over fugitives who might otherwise flee from justice. On this topic see J Presky, *The Provisional Arrest Clauses of Extradition Treaties: Are They Constitutional*, in *Loyola L.A. International & Comparative Law Journal* 1989, vol. 11, pag. 657. Provisional arrest warrants are an efficient law enforcement mechanism but can obviously raise probable cause issues in the domestic realms. Bilateral treaties normally enumerate the specific content of an application for provisional arrest. In the case of the extradition treaty between France and the USA (see Appendix) the items to be included in the request are: (a) a description of the person sought and information concerning the person's nationality; (b) the location of the person sought, if known; (c) a brief statement of the facts of the case, including the location and approximate date of the offense; (d) a description of the laws violated; (e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and (f) a statement that a request for extradition for the person sought will follow.

[33] Most treaties require that formal extradition requests be presented within forty-five to sixty days of a provisional arrest. See, by way of illustration, the treaties listed in footnote n. 13.

Generally, any time spent under arrest or detention pending an extradition proceeding would count and be deducted from sentence if and when sentence is actually served.[34]

At their first appearance before a judge (or soon thereafter) the persons sought are expected to make a crucial decision. They can either choose to stay in the requested country and follow through with the extradition proceeding or they can choose to consent[35] to extradition through a process often described as 'summary' or 'simplified' extradition.[36]' Summary extradition speeds-up the process and its outcome is a relatively quick surrender to the requesting country. In practice, a vast proportion of extradition cases are resolved in this manner, as the persons sought often prefer to return to the requesting country (especially when this is their home country) rather than face a prolonged period of prison or home detention[37] in the requested country, pending the extradition proceeding.

A typical extradition request includes an affidavit (from a judicial authority or enforcement officer) or diplomatic statement stating the facts of the case, copies of the laws broken, copies of the final judgment, the charge or arrest warrant, and a summary of the relevant evidence[38] (especially relevant in cases of extradition for the purpose of prosecution).[39] If the requested country

[34] In the EAW scheme, this rule can be found in article 26 of the EAW Council Framework Decision according to which "The issuing Member State shall deduct all periods of detention arising from the execution of a European Arrest warrant from the total period of detention to be served in the issuing Member state……".

[35] In the USA, this procedure is often referred to as a waiver. According to the 1926 Uniform Criminal Extradition Act (UCEA) the judge or magistrate examines whether the accused is the person wanted and is a fugitive from justice (UCEA § 15). Then, the individual may choose to waive extradition and speed up the process. When a waiver is made, the court has to inform the individual which rights he or she is waiving and ensure that they are consenting to return to the requesting country. A court will then determine the voluntariness and intelligence of the waiver, making later revocation more difficult. For discussion see A. Willems, *Extradition on the Two Sides of the Atlantic,* above footnote 9.

[36] In other words, a simplified extradition occurs whenever the desired person consents to surrender. Domestic laws and rules of bilateral treaties require the agreement to be formalized in writing, orally before the judge, or executed in the presence of a lawyer. Either a judge or the state equivalent can advise the persons sought on the formal proceedings and the rights they waive when consenting to surrender.

[37] Another major difference in extradition practice around the world is whether the person sought will – or will not – be subject to incarceration pending the extradition hearing in the requested country. While certain countries apply detention as the norm (Italy, Germany), others tend to allow the granting of bail, subject to certain conditions (electronic tagging, curfew, etc). In general, it is reasonable to expect that non-citizens of the requested State may be at some disadvantage in obtaining bail or non-prison conditions because they may be regarded as posing a greater flight risk than citizens.

[38] In Canada this information is summarized in the so called 'record of the case' (ROC); see G. Botting, *Canadian extradition law and practice,* 5th ed, 2015, p. 1.

[39] An example of the required documentation is found in article 8 of the Agreement of Extradition between the EU and the USA: 1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex: (a) the identity and nationality of the requested

determines that the documentation is insufficient, further explanation may be requested.

The typical procedure followed for international extradition cases is often described as a two-stage process. The two stages do not necessarily follow one another rigidly, and there may be overlaps between moments of the two stages under the domestic arrangements of each country. Generally, however, the assessment of the legality of extradition (Stage A) is a prerequisite to finalize and execute surrender unless political or administrative reasons suggest otherwise (Stage B)

Stage A

A crucial stage of the extradition proceeding is handled by the judicial authorities of the requested country and is intended to assess the *legality* of the extradition request under the terms of the relevant bilateral or multilateral treaty or other source governing the request in question. In this context, legality is also assessed against the domestic constitutional law or other relevant provisions of the requested country. Questions of legality may include, by way of illustration, whether the judgment invoked against the person sought is final in an extradition for conviction and whether there is a *prima facie* case against the person sought in an extradition for accusation. To satisfy the *prima facie* case, the requesting country is expected to specify the charges that will be pursued against the person sought once surrendered and provide relevant evidence.

At this stage, depending on each countries' legal arrangements, extradition hearings may be held before either criminal or administrative courts.[40] Whether they are held in chambers or publicly is also a matter for domestic regulation.[41]

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person; (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority; (c) evidence of an enforceable judgement, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2; (d) the nature and legal classification of the offence, particularly in respect of Article 2; (e) a description of the circumstances in which the offence was committed, including the time, place, and degree of participation in the offense by the requested person; (f) the penalty imposed, if there is a final judgement, or the prescribed scale of penalties for the offence under the law of the issuing member state; (g) if possible, other consequences of the offence.

[40] In the UK, for example, extradition hearings are held in first instance at Westminster Magistrates' Courts. Magistrates' courts are lower criminal courts which hold trials for summary offences: almost all criminal proceedings in the UK start at a magistrates' court. On appeal, however extradition cases in the UK are held before an administrative specialist court within the Queen's Bench Division of the High Court of Justice. In Italy, the extradition hearings are held by the criminal division of the Court of Appeal, consisting of a panel of three judges that usually sit in appellate criminal cases. Similar arrangements apply in Germany, where extradition hearings are held by the Higher regional court (which is in essence a criminal court of appeal). In Switzerland, the competent authority for extradition cases is the Federal Office for Justice (FOJ, Extradition Unit), which is an administrative authority.

[41] For example, extradition proceedings are held in public in the UK and Scotland while the opposite is true in most of the EU, including Italy, Germany, France, Greece, etc....

During the extradition proceeding before the judicial authorities, parties[42] may be allowed to appear at a hearing, argue the relevant legal issues, review the evidence presented in the extradition request (especially in extradition for accusation), and present evidence under the rules governing the presentation of evidence in the requested country. Typically, domestic courts of the requested country will not be inclined to allow the person sought to introduce evidence on guilt or innocence, as the issue in the extradition proceeding is the legality of extradition request, not the merit of the charges. This being said, the determination of a *prima facie* case (in an extradition for accusation) obviously involves evidentiary issues that relate to guilt or innocence, and a claim of innocence may sometimes be submitted strategically by the person sought in the attempt to persuade the local courts to deny the extradition request.[43] In some jurisdictions the persons sought in extradition proceedings are allowed to introduce expert evidence (for example on the interpretation of certain elements of foreign law or on the current state of prisons in the requested country in case a ground of refusal on humanitarian grounds is invoked) although the manner in which such evidence is introduced (live testimony, testimony via video-link documents only, etc.) varies significantly depending on domestic legal arrangements.

Clearly, while the proceeding held before the judicial authorities of the requested country cannot be regarded in any way as a 'trial', questions of guilt or innocence might still play a part in certain cases, for example in the establishment of a *prima facie* case in extraditions for accusations.[44] Also in these situations, however, the judicial authorities of the requested country are required to review the evidence to determine if surrender would comply with the requirements of the relevant sources (treaties or domestic law) and not to establish guilt or innocence.[45]

The decisions by judicial authorities are typically subject to one or more instances of appeal, almost exclusively on grounds of law. Some countries may also allow appellate review of the abuse of discretion of the decision rendered by the executive at another stage of the proceeding (see below). As explained

[42] Parties of extradition proceedings are the person sought for surrender (assisted by a lawyer) and the domestic prosecutor (acting on behalf of the requesting country or judicial authority that is seeking the surrender). In the USA, the prosecutor acting in extradition cases is normally a federal prosecutor.

[43] The strategy being that if the judicial authorities of the requested country could be made to believe that the person sought is innocent, they would then be less inclined to grant extradition.

[44] For example, determining if the defendant was in the requesting country at the time of the crime will help establish a prima facie cause for the case but will also work towards establishing whether the defendant is guilty or innocent.

[45] In *United States v. Wiebe,* 733 F.2d 549, 553 (8th Cir. 1984) a U.S. federal court stated that 'the extradition hearing is not a trial on the merits to determine guilt or innocence, but serves as a means of ensuring that probable cause exists to believe the person whose surrender is sought has committed the crime for which his extradition is requested.' The court in *Wiebe* furthered explained that the probable cause standard in extradition cases "as 'evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt.

earlier, appeals in extradition cases may challenge, for example, the interpretation of the relevant clauses in the applicable bilateral treaty, the definition of 'extraditable offences' (see below, §6) or the proper reading of the 'double criminality' requirement (see below, §7.1).

Stage B

The other stage of an extradition proceeding is handled by the executive authorities of the requested country (Ministry of Justice or Ministry of Foreign affairs, or other equivalent authority). In simple terms, the executive authority will weigh the legality of the extradition request against the 'political' implications of granting the request. There may be foreign policy implications and other humanitarian concerns that impact on the decision to surrender and these may also be under the authority of the executive in some countries. The basic rule, however, is that the executive will not order the extradition unless the courts of the requested country have agreed to it in the stage A of the process. In other words, if the judicial authorities of a country rule against the request, then the procedure for the extradition of the person sought will typically end and surrender will be denied (or an early extradition order that may have been issued will be revoked).

This 'political' (or 'administrative') stage of the process is meant to add a further layer of review before surrender is actually ordered, but it is fair to say that it is relatively unusual for the executive to take a stand against the determination of national courts.[46] However, the extent of the review attributed to the executive authority varies significantly from country to country and generally includes certain humanitarian (poor health, for example) or political concerns that would make the surrender 'undesirable' in a given case.

In any event, the ultimate determination to surrender the requested person rests with the executive authority and this is precisely what marks the distinction between traditional international extradition cases and the EAW scheme. In EAW cases, executive authorities of the EU member States are no longer involved in any way in the process: the authority to execute the European arrest warrant is placed entirely in the hands of the relevant 'judicial authorities' in the requested countries.

It is then again the responsibility of another executive authority (possibly the Ministry of Interior, the national police, or other equivalent) to enforce the decision on extradition and to negotiate the place and time of surrender with the requesting country. In cases where extradition is ordered, it is the responsibility of the requested country to make the person sought available, transfer him or her, or take the person to the requesting country's border. Typically, the person

[46] A significant exception is the extradition case against Pinochet (which is listed among the notable extradition cases in Part B of this book), in which it was precisely a decision of the UK Home Secretary (in the 'political/administrative' stage of the extradition proceeding) that ordered the release of the person on health grounds, after a medical test stated that he was unfit to appear before a court of law. Surrender to Spain did not take place, despite the fact that the UK courts had allowed extradition to proceed.

sought is taken by plane, car, train with the requested country's officials to be handed over to the requesting country's police officers at either an airport or border.

6 Extraditable Offenses

International extradition rules do not normally apply to petty crimes and minor offences, given the complexities of the surrender proceedings across the world.[47] In the context of the EAW scheme,[48] many have voiced concerned with the costly practice of issuing EAWs for trivial offences, thus arguing for a proportionality standard for EAW cases.[49]

Countries tend to use two different methods when identifying an extraditable offense. The older method designated extraditable offenses as only those

[47] Here are a few examples taken from bilateral treaties. '...if extradition is granted for an extraditable offense, it may also be granted for offenses which are punishable by less than a year's imprisonment.' (Italy and the United States of America International Extradition Treaty, 1983). "1. Acts shall be extraditable if they are punished under the laws in both States by deprivation of liberty for a maximum of at least one year or by a more severe penalty (Art 2 para 1 Extradition Treaty Between The United States of America and France, see Appendix of this book). "A crime or offense shall be an extraditable crime or offense if it is punishable under the laws of the Requesting and Requested States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty." (United States of America and Czech Republic International Extradition Treaty, 2006). "An offence shall be an extraditable offence if it is punishable under the laws of both Parties by imprisonment for a period of not less than one year, or by a more severe penalty." (art 2, para 1, Australia-Malaysia Extradition Treaty, 2007).

[48] See below, footnote n. 17.

[49] See S. Carrera – E. Guild – N. Hernanz, *Europe's Most Wanted? Recalibrating Trust in the European Arrest Warrant system,'* in *CEPS paper in Liberty and security in Europe*, 2013, vol. 55, pag. 28, in which the authors recommend a more realistic threshold of 3 years (instead of 1 year) imprisonment for the issuing of an EAW. For many years one of the most frequent criticisms of the EAW scheme (across Europe, and especially in the UK) has been the increasing volume of extradition requests made for 'trivial' offences. Although the EAW scheme has not been amended to introduce an explicit proportionality check, reference to proportionality is made in the *Handbook on how to issue and execute a European arrest warrant* published by the European Commission in 2017. The handbook states (pag. 19) that a EAW should always be proportional to its aim. Even where the circumstances of the case fall within the scope of Article 2(1) of the EAW Council Framework Decision, issuing judicial authorities are advised to consider whether issuing a EAW is justified in a particular case. Considering the severe consequences that the execution of a EAW has on the requested person's liberty and the restrictions of free movement, the issuing judicial authorities should consider assessing a number of factors in order to determine whether issuing a EAW is justified. In particular, the following factors could be taken into account: (a) the seriousness of the offence (for example, the harm or danger it has caused); (b) the likely penalty imposed if the person is found guilty of the alleged offence (for example, whether it would be a custodial sentence); (c) the likelihood of detention of the person in the issuing Member State after surrender; (d) the interests of the victims of the offence.

enumerated offenses listed[50] within the text of the bilateral treaty. Issues may arise when dealing with a treaty that uses this method because of the evolving nature of criminal offenses. For example, espionage or cybercrime are relatively modern offenses and bilateral treaties seldom provide them.[51] The newer method more broadly indicates a minimum sentence requirement and the need to fulfill the double criminality standard.

The EAW scheme operates a combination of the two methods. For 32 categories of offences, there is no verification on whether the act is a criminal offence in both countries. The only requirement is that it be punishable by a maximum period of at least 3 years of imprisonment in the issuing country. For other offences, surrender may be subject to the condition that the act constitutes an offence in the executing country (see article 2 of the 2002 EAW Council Framework Decision, reported in the Appendix of this book).

7 Refusal Grounds

This section discusses the most commonly invoked refusal grounds in extradition proceedings. This is essentially where an extradition case is one or lost.

Bilateral treaties and domestic statutes may separate refusal grounds in mandatory grounds versus optional grounds,[52] and the literature on extradition often employs the terms 'conditions of extradition' or 'bars against extradition'.[53]

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[50] By way of illustration, murder, attempt to commit murder, rape, arson, burglary, the act of breaking into and entering the office of the Government and public authorities or the offices of banks, banking-houses, savings-banks, trust-companies, insurance and other companies, or other buildings not dwellings with intent to commit a felony therein, forgery, the fabrication of counterfeit money, etc... are commonly enumerated in bilateral treaties signed by the USA.

[51] An example of the enumerated crimes in a treaty is found in Article 2 of the Bilateral treaty between Romania and the USA, (1924): Persons shall be delivered up according to the provisions of the present Treaty, who shall have been charged with or convicted of any of the following crimes: 1. Murder, comprehending the crimes designated by the terms parricide, assassination... 2. The attempt to commit murder. 3. Rape, abortion... 6. Arson. 7... 9. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein... 11. Robbery... 14. The fabrication of counterfeit money... 16. Embezzlement... Kidnapping of minors or adults... 18. Larceny ... 20. Perjury or subornation of perjury. 21. Fraud... 23. Willful desertion or willful non-support of minor or dependent children.

[52] See Articles 3 and 4 in Model Treaty of Extradition (in Appendix) and Articles 3 and 4 of the EAW Council Framework Decision (in Appendix).

[53] One could perhaps make a more qualified distinction between *refusal grounds* and *conditions* that must be met in order to grant the surrender of the person sought. The distinction between 'refusal grounds' and 'conditions' may be relevant at the domestic level, based on how each system construes its doctrine of extradition law. In practice, however, what matters here is that both refusal grounds and conditions may be invoked by the person sought to avoid surrender.

While this paper cannot possibly cover the details of all possible refusal grounds, it provides a concise description of the most commonly invoked ones in the jurisdictions of democratic countries. They include: double criminality, political offenses, nationality of the person sought, the rule of speciality, passage of time, human rights and humanitarian concerns, and *ne bis in idem*.

7.1 Double Criminality

Double criminality has always been a traditional condition for extradition. It was explicitly acknowledged in Article 2 of the 1957 European Convention of Extradition.[54] Although international treaties may list specific criminal offences that will be extraditable, extradition is almost always subject to the additional requirement that the offence is criminalised in the legal orders of both countries involved (the requesting country and the requested country). According to an often quoted opinion on this matter in the context of the EAW scheme, 'the double criminality requirement is embedded in the principles of sovereignty, reciprocity and non-intervention, which constitute the fundamental elements of cooperation between States enshrined in instruments of international public law'.[55]

In simple terms, double criminality (also referred sometimes as *dual criminality*) is a general principle which prefers the requested country grant extradition only when the alleged act is a crime in both the requesting country and requested country.[56]

A double criminality clause in a bilateral treaty on extradition may read as follows:

An offense, however denominated, shall be an extraditable offense only if it is punishable under the laws of both Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty.[57]

To determine whether the double criminality clause is satisfied one must look at the conduct alleged of in the extradition request. However, it is often said that the assessment of double criminality can take two different form: assessment *in abstracto* and assessment *in concreto*. This terminology – frequently used in

[54] According to Art. 2 para 1 of the 1957 European Convention on Extradition "Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party...". For a comparative study of double criminality on the USA; Canada and the UK, see S.A. Williams, *The Double Criminality Rule and Extradition: A Comparative Analysis*, in *Nova Law Review*, 1991, pag. 581-624.

[55] Advocate General's Opinion in the Grundza case (Case C-289/15).

[56] For discussion of the double criminality concept see L. Klimek, *European Arrest Warrant*, 2015, Springer, pag. 81-86.

[57] Article 2 of the treaty governing extradition between Italy and the USA. See also, article 2 of the 1990 U.N. Model Treaty on Extradition (in Appendix).

the theory of criminal law – is however far from clear. My understanding is that the assessment of double criminality *in abstracto* calls for verification of the question of whether the behaviour and conducts referred to in the extradition request would amount to a criminal offence if committed on the territory of the requested country. The assessment of double criminality *in concreto* seems to require much more, including the satisfaction of other conditions of criminal liability as defined by the laws of the requested country, such as the age or mental state of the accused or consideration of further factual circumstances in which the criminal conduct was allegedly committed.

In a 2015 EAW case before the ECJ, the Advocate General suggested that 'the distinction *in abstracto* or *in concreto* is not a binary choice, but rather a sliding scale. That distinction is based on the level of abstraction chosen to analyse double criminality. At the highest level of abstraction, it could be argued that the focus is on the mere immorality of an act: a certain conduct is considered wrong in both legal systems. Further down, one finds the basic constituent elements of the crime. Even further down on the scale of abstraction, one may look into all the other particular elements of criminal liability, including for example the question of age, or the (non-)existence of exceptional circumstances, but also the severity of sanctions. At the lowest level of abstraction (or rather the highest level of concretisation), all the individual factual elements of the conduct are relevant as well. What is required there is in fact virtual identity of the conduct and its legal assessment under both legal systems in question'.

While double criminality is still key to international extradition cases,[58] a revolutionary decision was made in the EAW scheme so to make surrenders within the European Union less and less dependant on the principle of double criminality, on the assumption that its assessment may constitute a major obstacle against effective co-operation between countries. This is why the EAW scheme included a list of 32 offenses for which double criminality was abolished in the name of mutual trust.[59]

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[58] See for example, among many others, the double criminality arguments raised in the cases of Hayle Abdi Badre, Navinder Singh Sarao and Carles Puigdemont (reported in the list of notable extradition case in Part B of this book).

[59] The 32 offenses exempt from double criminality in the EAW scheme are: participation in criminal organization; terrorism; human trafficking; sexual exploitation of children; drug trafficking; weapons trafficking; corruption; fraud; money laundering; counterfeiting currency; computer-related crimes; environmental crimes (including endangered animal and plant trafficking); unauthorized entry into residence; murder and grievous bodily injury; trade of human organs; kidnapping; racism and xenophobia; armed robbery; trafficking of cultural goods and antiques; swindling; extortion; counterfeiting of products; forgery of administrative documents; forgery of payment; trafficking hormonal substances; trafficking nuclear or radioactive material; trafficking stolen vehicles; rape; arson; crimes within the jurisdiction of the International Criminal Court (genocide, war crimes, etc...); unlawful seizure of aircraft/ships; and sabotage.

7.2 Political Offenses

The political offense[60] bar against extradition dates back at least 200 years[61] and is traditionally based on the belief that individuals have a right to resort to political activism to promote political change, even by means of activities that may be regarded by the ruling political class as acts of treason, rebellion, etc. The say goes that individuals should not be returned to countries where they may be subjected to unfair proceedings and punishment because of their political opinions. This exception is commonly included in many extradition treaties and is also mentioned in the United Nations Model Treaty on Extradition:[62]

Extradition shall not be granted in any of the following circumstances: (a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature.[63]

International extradition practice traditionally distinguishes two separate categories of offences of political 'nature' (or 'character'): 'pure' and 'relative' offenses. The said distinction has never been definitively defined, but is largely based on the target of the crime and the means used to carry it out. A 'pure' political offense is generally defined as an action in which government officials or an official state regime are the primary target of the crime. Pure political offenses may also be 'victimless' conducts directed at a form of government rather than a person. Examples include crimes such as treason, espionage, sedition, and rebellion. In contrast, 'relative' political offenses are ordinary statutory crimes (such as murder or assault) that are perpetrated in a political

[60] This should not be confused with the policy of certain Governments to grant political asylum to foreign freedom fighters or terrorists, based on similar concerns, thus avoiding extradition proceedings altogether. The most notable practice is that of France under the so called Mitterand doctrine – a policy established in 1985 and terminated 15 years later – that concerned primarily far-left members of the Italian Red brigades who had been convicted for violent crimes in Italy. See the case of Paolo Persichetti, reported in the list of notable extradition cases in Part B of this book.

[61] The concept of a political offence exception developed during the French Revolution and the first provision to protect political offenders appeared in a Belgian domestic extradition statute in 1833. According to A. C. Petersen, *Extradition and the political offense exception in the suppression of terrorism*, in *Indiana Law Journal*, 1992, Vol. 67, page 774, the political offense exception has stood for two main principles: 'that the freedom of speech of the emerging Western democracies should be acknowledged outside of their boundaries and that an attitude of noninterference in political struggles abroad would best serve the goals of diplomacy and international cooperation'.

[62] The full text of the 1990 U.N. Model treaty on extradition is available for reference in the Appendix of this book.

[63] Similarly, Article 4 of the treaty governing extradition between the USA and Canada (1976) reads as follows: *Extradition shall not be granted ...when the offense in respect of which extradition is requested is of a political character....*

context or for a political scope, and may be directed at non-governmental as well as governmental targets.

The distinction is often quoted to suggest that 'pure' political offences should automatically 'trigger' this ground of refusal while 'relative' political offense should require careful scrutiny.

In recent years, the political offence bar to extradition seems to have lost most of its traditional appeal and some have argued that it may effectively have been abolished.[64] On the one hand, no reference at all to political offence is made in the EAW scheme.[65] On the other hand, a number of international treaties and conventions appear to have significantly limited the scope of the political offence, especially in the contexts of armed conflicts and acts that may be labelled as terrorism.[66] In other words, certain crimes, such as war crimes, slavery, genocide, and air and sea piracy, will always be denied the benefits of political offense status given that most bilateral treaties pay explicit deference to the obligation of the requesting country to prosecute by reason of multi-lateral international agreements.[67]

7.3 Nationality of the Person Sought

This is a country-specific chapter of extradition law. Many countries (especially in Europe and Latin America) traditionally afford some additional degree of protection to their own citizens and have domestic (constitutional or statutory) provisions that call for restrictions against the extradition

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[64] A. C. Petersen, *Extradition and the political offense exception*..., above footnote n. 61, page 767.

[65] This is why the case involving political leader Carles Puidgemont (reported in the list of notable extradition cases in Part B of this book) could not be litigated on the basis of the 'political offence' bar against extradition.

[66] According to the European Convention on the Suppression of Terrorism, for example, for the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; b an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; an offence involving kidnapping, the taking of a hostage or serious unlawful detention; an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

[67] See for example Article 4 of the treaty governing extradition between the USA and Germany (1978) according to which 'for the purpose of this treaty the following offenses shall not be deemed to be offenses within the meaning of paragraph (political offence): (a) ... (b) an offense which the Contracting Parties or the Requesting State have the obligation to prosecute by reason of a multilateral international agreement'.

of nationals for certain categories of crimes. In negotiating bilateral extradition treaties, these countries typically insert a mandatory or (more often) optional ground of refusal based on the nationality of the persons sought.

For example, article 7 of the 1978 bilateral treaty governing extradition between Germany and the USA reads as follows:

Neither of the Contracting Parties shall be bound to extradite its own nationals. The competent executive authority of the Requested State, however, shall have the power to grant the extradition of its own nationals if, in its discretion, this is deemed proper to do and provided the law of the Requested State does not so preclude.

More often than not, the (mandatory or optional) refusal to extradite a country's own nationals is associated with the obligation, for that country, to prosecute the person before its domestic courts according to the principle *aut dedere aut iudicare*[68] to prevent the risk of impunity.

This is not to overlook, however, that there are many jurisdictions (the USA and the UK, to name just a few) that do not afford any special protection to nationals and have no domestic legal provisions concerning the alternative 'extradite or prosecute'.

In the context of the EAW scheme, refusal grounds based on nationality of the person sought would go against the EU principle of non-discrimination on grounds of nationality (art 14 TFEU). This being said, the rule in the EAW scheme is that in case of *extradition for conviction* surrender may still be denied if the requested person is 'a national or resident of the executing Member States and the State undertakes to execute the sentence ... in accordance with its domestic law'.[69]

7.4 Rule of Speciality

The rule of speciality (often referred to as *principle of speciality*) relates to the general idea that persons surrendered under an extradition request should not be prosecuted for offenses other than those specified in the extradition request.

Historically, this principle arose as a result of concern that requesting States would conceal true intentions to prosecute for offenses considered political crimes or where double criminality did not apply.[70] The rule of speciality is found in most bilateral treaties and applies to persons that face an extradition

[68] The International Law Commission considered the topic of the *aut dedere aut iudicare* obligation in its 59th session (held in Geneva from 7 May to 8 June and 9 July to 10 August 2007). The session produced a detailed report that lists a wealth of international treaties and domestic sources of law based on this principle. The 26-page report is published online and is entitled *The obligation to extradite or prosecute (aut dedere aut judicare)* (link: https://www.legal-tools.org/doc/e2fc7f/pdf).

[69] Art. 4-6 of the 2002 EAW Council Framework Decision (see Appendix).

[70] L. Klimek, *European Arrest Warrant*, above footnote n. 56 at 85.

for accusation. The rule clearly requires that only the offenses included in the formal extradition request are grounds to try a person sought.[71]

A typical 'rule of speciality' clause in a bilateral treaty on extradition will read as follows:

A person extradited under this Treaty may not be detained, tried or punished in the Requesting Party except for: (a) the offense for which extradition has been granted or when the same facts for which extradition was granted constitute a differently denominated offense which is extraditables.[72]

This rule requires the requesting country to limit prosecution to the stated offenses and disallows prosecution for offenses committed before the extradition if not included in the request.[73] The doctrine is designed to protect the sovereign rights of countries to use discretion in granting the surrender of individuals to other sovereign countries.

One intriguing question is what may happen when the requesting country violates the specialty clause after a person sought is being surrendered. The answer is that there is obviously no formal mechanism to remedy the violation. Countries may choose to expand charges beyond those listed in the extradition request and face no repercussions other than a deterioration of their international reputation with a possible impact on future extradition cases.

There are obviously legitimate exceptions to the rule of speciality and the EAW scheme offers a relatively long list of the most common ones. As one would expect, for example, the rule is said not to apply when the person having an opportunity to leave the territory of the requesting country to which he or she has been surrendered has not done so within 45 days of his final discharge, and when the person has (voluntarily) renounced the protection of the speciality rule before or after the surrender.[74]

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[71] In the 1997 case *U.S. v. Kin-Hong*, a federal court in the USA found on appeal that the rule of specialty has two basic components. First, the requesting state may not try the fugitive for any crimes other than the specific crime for which extradition was sought and granted. Second, the requesting state may not re-extradite the fugitive to a third state.

[72] Article 16 of the 1983 treaty governing extradition between Italy and the USA.

[73] See the case of Abu Salem (reported in the list of notable extradition cases in Part B of this book) in which Indian authorities brought additional charges against the person sought (some of which carried the death penalty) after an assurance that death penalty would not be sought and in violation of the rule of speciality.

[74] See article 27 of the EAW Council Framework Decision (in Appendix).

7.5 Passage of Time

It is not unusual for extradition proceedings to commence a long time after the alleged facts of the case.[75] Delays may be brought about by the person sought fleeing the country but also from procedural and structural inefficiencies on the part of the requesting country.

Domestic rules of extradition may require a country to refuse an extradition request if enough time has passed since the criminal conduct took place or if, under the laws of the requested country, the statute of limitations of the criminal offense has run its course.[76] Countries vary greatly on their statutes of limitation and the appropriate procedures for implementation, and these regulations fall entirely beyond the scope of this paper.

The rationale for a passage of time (or *lapse of time*) bar against extradition is that the person's circumstances may have significantly changed (especially if the person had no other encounters with the criminal justice system) and that surrender to a foreign country may have an unjust impact on those reliant on the person sought (typically spouse, children and close family members).

The idea that a significant delay or lapse of time would make it inappropriate to extradite is explicitly codified in the United Kingdom[77] while under the EAW scheme only limited concerns of passage of time materialized in Article 4 lett. 4) according to which a ground for optional non-execution of the EAW occurs where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member state. It cannot be overlooked, however, that some bilateral treaties declare in no uncertain terms that the passage of time is no bar to extradition[78]

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[75] See for example the Roman Polanski case (reported in the list of notable extradition cases in Part B of this book) In the case of Mustafa Kamel Mustafa (also reported in the list of notable extradition cases in Part B of this book), at the time of his arrest at least six years had passed since he committed the criminal acts that lead to his extradition. Mustafa was finally extradited to the USA on October 5, 2012 for crimes committed in 1998. His attorneys unsuccessfully argued the passage of time made litigating the case unduly difficult.

[76] This would typically be raised as an argument of double criminality *in concreto* (see above §7.1), as the specific offence in question would not be 'punishable' in the jurisdiction of the requested state.

[77] Section 14 of the United Kingdom *Extradition Act 2003* states that extradition is barred 'by reason of passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have a) committed the extradition offence (where he is accused of its commission), or b) become unlawfully at large (where he is alleged to have been convicted of it)'. There is abundant case-law in the UK (i.e. *Wenting v. High Court of Valenciennes* [2009] EWHC 3528 (Admin); *R (Cepkauskas) v. Lithuania* [2011 EWHC 757 (Admin)] indicating that unexplained delays of years in the prosecution abroad, combined with lack of additional accusations or convictions for the person sought, would typically trigger the passage of time bar.

[78] See for example: art. 6 of the 2007 treaty governing extradition between the USA and the UK (according to which 'the decision by the Requested State whether to grant the request for extradition shall be made without regard to any state of limitations in either State) and art. 6 of the 1995 treaty governing

Generally, however, it is expected that most domestic courts will be rather unwilling to rule in favor of 'passage of time' arguments when they are raised by persons that had concealed their whereabouts or evaded arrests in the requesting country.

A notable example of disregard of passage of time is in the United States, where there are no statute of limitations for capital offenses, which are offenses punishable by death,[79] thus making capital offenses perpetually extraditable.[80]

7.6 Human Rights and Humanitarian Grounds

Under the heading 'human rights and humanitarian grounds', I refer to instances in which domestic courts are expected to assess whether surrender to a requesting country would be incompatible with a person's set of basic or fundamental rights and freedoms.[81] Defining the concept of human rights is however an extremely difficult task that I will not even attempt in this paper as it falls entirely beyond the boundaries of extradition law.

In theory, the scope of this broad refusal ground would be easier to define whenever a supranational consensus exists on a shared set of well-defined human rights and freedoms (as it should be the case, for example, for countries members to the Council of Europe that all signatories to the 1950 European Convention on Human Rights). The assumption is that this refusal ground would operate if and only if there was an actual risk that the person sought might be subject to a violation of those values (in the example, a violation of one of the provisions of the European Convention of Human Rights). In practice, however, mere membership of a requesting country to a 'club' of countries that are allegedly committed to some kind of 'human rights' protection cannot create an absolute presumption of compliance, although it is reasonable to expect that the scrutiny into the law and practice of the requesting country would be less intrusive in such cases. Similarly, it is not necessarily true that certain extradition arrangements with transitional countries or even non-democratic countries (for example Mainland China or Belarus) would invariably expose the

extradition between USA and Jordan (according to which 'The decision whether to grant the request for extradition shall be made without regard to provisions of the law of either Contracting State concerning lapse of time').

79 18 U.S.C § 3281 (1994).

80 See the extradition case of Nelson Iván Serrano Sáenz (reported in the list of notable extradition cases in Part B of this book). Serrano Saenz was extradited from Ecuador to the U.S. in 2002 for four 1977 murders of his former business partners in the state of Florida. He was eventually convicted and sentenced to death in 2007, 30 years after the alleged criminal actions.

81 On this topic see J. Dugard–C. Van den Wyngaert, *Reconciling Extradition with Human Rights*, in *American Journal of Int'l Law*, 1998, Vol. 92, pag. 187. In Canada, the question of human rights compliance is seen through the lens of the 'shock the conscience' standard. This standard was first adopted in the 1987 case *Canada v. Schmidt* to determine whether the extradition of the person sought in the case would be a breach of fundamental justice under the *Canadian Charter of Rights and Freedoms*.

person sought to inhuman conditions. A case-by-case scrutiny would always be necessary, especially in case specific assurances may be sought and obtained to ensure the quality of the treatment in the requesting country.[82]

To further complicate things, bilateral and multilateral treaties as well as domestic laws on extradition do not necessarily refer to 'human rights'[83] or 'humanitarian grounds' generally but rather identify in detail what specific aspects of the judicial proceedings in the requesting country (including treatment pending accusation and punishment) could result in the refusal of an extradition request.

In recent years, there have been refusals to extradite persons who were elderly or in poor health,[84] thus impacting their ability to stand trial or safely travel from one country to another. More importantly, extraditions were refused in case of persons sought who faced the risk of a) the death penalty, b) life sentence, c) poor prison conditions and d) trial unfairness. I will discuss these briefly in turn.

(a) Capital punishment

A relatively strong case against extradition may be mounted when there is an actual risk that the person sought may face capital punishment in the requesting country, either because the charge involves an offence punishable by death or because the person sought has been convicted to death. Abolitionist countries are normally reluctant to extradite in case of capital punishment as the stand against the death penalty is often key to their foreign policy agenda.[85]

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[82] See below, §8.

[83] Notably, the absence of a broad 'human rights' refusal ground in the EAW Council Framework Decision was a reason of sharp criticism in the early years of application of the EAW scheme. In some Member States such as the UK and The Netherlands, however, the domestic legislation implementing the 2002 Council Framework Decision included an explicit human rights safeguard. While some early interpreters had suggested that reference to human rights in the Council Framework Decision could still be inferred from a broad reading of certain provisions that refer to rights protection (Art. 1(3) with the 12th and 13 the recitals of the Preamble) it was only thanks to the case-law of the European Court of Justice that the impact of human rights discourse on the EAW was clarified. In a first set of rulings, the ECJ focused on the right to be heard (*Radu, 2013*), the right to a fair trial in the context of in absentia judgments (*Melloni, 2013*) and the right to liberty (*Lanigan*, 2015). In later rulings, the ECJ stated that an executing judicial authority must refrain from giving effect to an EAW if there exists, for the individual in respect of whom the EAW has been issued, a real risk of inhuman or degrading treatment (*Aranyosi and Căldăraru*, 2016) or a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial (*Celmer*, 2018).

[84] See the extradition case against Pinochet (which is listed among the notable cases in Part B of this book).

[85] In the EU, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment. The Council of Europe has sought to abolish the use of the death penalty by its members absolutely, through Protocol 13 of the European Convention on Human Rights. However, this

Historically, Italy is a good example, as the use of capital punishment has been banned in the country since 1889 (with the exception of the Fascist period 1926-1947). In the Italy-USA bilateral treaty on extradition it is stated that:

when the offense for which extradition is requested is punishable by death under the laws of the requesting Party and the laws of the requested Party do not provide for such punishment for that offense, extradition shall be refused unless the requesting Party provides such assurances as the requested Party considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.[86]

The language of the clause introduces the concept of 'assurances' for which more discussion is offered in §8.

As mentioned earlier,[87] the European Court on Human Rights was one of the first international tribunals to address the legality of extraditing fugitives to face the death penalty. In the 1989 case *Soering v. UK*, the court focussed not only on the death penalty itself but also on a review of death row conditions as contrary to Article 3 of the European Convention, given the anticipated prolonged time that the person sought would have spent 'in limbo'.

National courts, such as the Supreme Court of Canada, have likewise held that extraditions of suspects to face the death penalty are constitutionally prohibited, absent assurances that the requesting country would not seek the death penalty.[88] Over the years, national courts in many countries (The Netherlands, Switzerland, South Africa to mention a few) have also required assurances that the nation requesting extradition would not impose the death penalty. The Italian Constitutional Court has gone one step further, refusing to extradite suspects even in the face of an assurance, on the argument that the degree of discretion that the Italian authorities enjoyed in reviewing the adequacy of assurances was *per se* contrary to the absolute constitutional ban against the death penalty.[89]

(b) Life sentence

It is a settled principle that the choice of the appropriate sanction for a given offence is a matter for each sovereign country. Each country submits to different theories of punishment such as deterrence, incapacitation, rehabilitation

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only affects those member states which have signed and ratified it, and they do not yet include Armenia, Russia, and Azerbaijan.

86 Article 9, Bilateral treaty on extradition Italy-USA (1983).

87 See above, footnote n. 26.

88 See the extradition case of Glen Sebastian Burns (reported in the list of notable extradition cases in Part B of this book). For extensive discussion of the Canadian extradition practice in case of extradition requests concerning charges punishable with the death penalty see S.A. Williams, *Extradition to a State That Imposes the Death Penalty*, in *Canadian Yearbook of International Law*, 1990, vol. 28, pag.117-168.

89 Constitutional court of Italy, Judgment 223 of the year 1996 in relation to the extradition case of Pietro Venezia, an Italian citizen charged in Florida for the murder a tax authority officer.

and retribution and it is generally accepted that major differences in sentencing practices are a natural byproduct given the disparate goals of each of the said theories. It is thus extremely difficult to persuade the authorities of a requested country to question or challenge the adequacy or proportionality of punishment prescribed by law in a foreign jurisdiction. Unless the person sought can prove instances of gross imbalance this argument against extradition is almost invariably doomed to fail.

Life sentence, however, may be to a certain degree controversial because some countries subscribe to the idea that such punishment[90] collides against the purpose of rehabilitation, especially if life sentence is applied with no genuine prospect of release. In the 2014 *Trabelsi v. Belgium* case, the European Court of Human Rights ruled that there is a breach of Article 3 of the European Convention on Human Rights when a jurisdiction does not lay down at least a mechanism or procedure to review life sentence and offer some foreseeable prospects of release.[91] In the EAW scheme, countries are allowed to subject the surrender of the person sought in case of custodial life sentence or life-time detention order to the 'condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply…'.[92]

(c) Poor prison conditions

One of the most commonly invoked humanitarian refusal grounds revolves around the prison conditions in the requesting country. The most common issue raised is overcrowding. This is an extremely important chapter of extradition law nowadays, thanks to the efforts of international[93] and local organisa-

[90] In a 2001 judgment the Mexican Supreme Court held that the 'unusual and extreme punishment' clause of Article 22 of the Mexican Constitution prohibited. life in prison and stated that Mexico will no longer extradite persons sought who face a potential life sentence in the country requesting extradition: for discussion see V. Maaskamp, *Extradition and life imprisonment*, in *Loyola L.A. International and Comparative Law Review*, 2003, Vol 25, pag. 741.

[91] In *Trabelsi*, the Strasbourg court moved from the assumption that the imposition of a sentence of life imprisonment on an adult offender was not, in itself, prohibited by any article of the European Convention on Human Rights. However, it then ruled that compatibility with Article 3 of the Convention required that a sentence should not be irreducible *de jure* and *de facto*. The *Trabelsi* case concerned the surrender, which had been granted despite the indication of an interim measure by the European Court of Human Rights, of a Tunisian national from Belgium to the USA, where he was prosecuted on charges of terrorist offences and was liable to life imprisonment.

[92] Art. 5-2 of the EAW Council Framework Decision (see Appendix).

[93] Of great significance is the work of the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT) that was set up under the Council of Europe's European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force in 1989. The mission of the CPT is to organise visits to places of detention, in order to assess how prisoners are treated. CPT delegations have unlimited access to prisons and the right to

tions that regularly monitor prisons conditions and an increase sympathy of judicial authorities for arguments of inmate mistreatment and prison mismanagement.

Generally, the burden to prove the poor state of prison conditions is on the person sought. The requested person's own evidence and testimony is clearly not enough at this regard and would need to be strongly supplemented by expert testimony, case law, and governmental or non-governmental reports that can confirm the specific risk. Key to the success of this refusal ground is the possibility to introduce in extradition proceedings expert evidence from reputable – and possibly very recent – international or local sources. In the context of the Council of Europe the presumption that any Member State is compliant with Article 3 of the European Convention in its management of prison conditions is rebutted when the European Court of Human Rights has issued a 'pilot judgment' identifying systemic or structural problems of significance.[94]

In the EAW scheme, the legitimacy of refusals based on poor prison conditions can now be found in the *Aranyosi and Căldăraru* standard, according to which

> *If there is objective, reliable, specific and updated information of generalised or systematic deficiencies of the detention conditions in the issuing Member State, the executing judicial authority must determine, specifically and precisely, whether there is a real risk. To that end, it must request supplementary information from the issuing judicial authority. On the basis of the information provided, it needs to assess whether a 'real risk' exists. It should then decide to execute the warrant (if there is no real risk) or to postpone the execution (if there is a real risk).*[95]

Subsequent ECJ cases have further specified the extent of the assessment that is expected from the judicial authorities of the requested country[96] and it is

move inside without restriction. They interview persons deprived of their liberty in private, and communicate freely with anyone who can provide information. After each visit, the CPT sends a detailed report to the state concerned. Over the years, the CPT has developed a set of standards to measure the quality of treatment, especially in connection with Article 3 of the European Convention on Human Rights. Other international organisations that conduct prison reports are *Amnesty international*, *L'Observatoire international des prisons* (OIP) and the *World Health Organisation*.

94 In the last decade, pilot judgments on prison conditions were handed down by the European Court of Human Rights against Russia (*Ananyev and others v. Russia*, 2012), Italy (*Torreggiani and others v. Italy*, 2013), Bulgaria (*Neshkov and others v. Bulgaria*, 2015) and Hungary (*Varga and others*, 2015).

95 *Aranyosi and Căldăraru*, ECJ Judgment of 5 April 2016.

96 In *ML*, ECJ Judgment of 25 July 2018., the ECJ has further specified that the judicial authority of the requested country 'is required to assess only the detention conditions in the prisons in which, according to the available information, that person will be detained, including on a temporary or transitional basis. The executing judicial authority must assess solely the actual and precise detention conditions that are relevant for determining whether that person will be exposed to a "real risk". The executing judicial authority may take into account information, such as, in particular, an assurance that the individual

now relatively frequent to read about decisions of non-execution of an European Arrest Warrant all across Europe, based on *ad-hoc* reports relating to certain prisons in the requesting country.[97]

Prison condition is also an area in which a major part is played by the practice of seeking assurances that the person sought will be detained in accordance with certain qualified minimum standards. The topic of assurances will be further discussed in §8.

(d) Trial unfairness in the requesting country

Another major concern in extradition proceedings is whether the person sought has received (in case of extradition for conviction) or will receive (in case of extradition for accusations) a fair trial in the requesting country. Once again, the definition of 'trial unfairness' falls beyond the scope of extradition law and reference can only be made here to international standards of fairness developed by reputable sources such as Article 14 of the International Covenant on Civil and Political Rights or Article 6 of the European Convention on Human Rights.

In the 1990 U.N. Model extradition treaty, for example, it is stated that extradition shall not be granted:

if the person whose extradition is requested ... has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14.[98]

Notably, however, many bilateral treaties on extradition[99] make no specific reference to trial unfairness on the assumption that the Contracting Parties would trust or at least pay some deference to the manner in which criminal trials are conducted by the other side.

Generally, in order to be successful on this ground of refusal the persons sought will have to show substantial grounds for believing that they have suffered or risk[100] suffering a *flagrant denial* of fair trial in the requesting country. At this regard, all aspects of the criminal proceeding in the requesting country may come into relevance including the impartiality of judges, their ability to stand external pressure, the manner in which the trial is conducted, access

concerned will not be subject to inhuman or degrading treatment, provided by authorities of the issuing Member State other than the issuing judicial authority.

97 For a comment to a 2018 ruling of the Italian Supreme court that did not execute a EAW issued by a Belgian judicial authority for reason of poor hygiene and overcrowding see S. Maffei, *Mandato di arresto europeo e condizioni carcerarie in Belgio: le incertezze della Suprema Corte*, in *Riv. pen.*, 2018, p. 927.

98 Art. 3, lett. f) in the 1990 UN Model treaty on extradition (see Appendix).

99 See, for example, the extradition treaty between the USA and France (in the Appendix).

100 In the UK, Courts have defined the term 'real risk' to mean a 'risk that is substantial and not merely fanciful; and it may be established by something less that proof of a 51% probability'. (*Brown v. Government of Rwanda* [2009] EWHC 770 at para. 34).

to representation, possibility to introduce evidence and to counter the arguments of the other side.[101]

Aside from a generic broad reference to trial fairness, bilateral treaties may also list specific rights that are worthy of consideration. For example, the 1990 UN Model extradition treaty further specifies that:

If the judgement of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.[102]

Trials *in absentia*[103] are a common source of controversy in extradition law, as they are permitted in relatively few countries where domestic rules of criminal procedure allow for the trial to begin or continue without the personal attendance of the accused person, typically upon the condition that he or she is aware of the prosecution and willing to waive the right to appear in court. In the EAW scheme, the controversial subject of *trials in absentia* led to an amendment to the 2012 Council Framework Decision in 2009, in an effort to further promote the person's awareness of the trial conducted against him or her. The newly added Article 4a in the EAW scheme[104] entirely replaced previous provisions and established a general and optional right for refusing to execute an EAW where the accused has not appeared in person at his or her trial at any stage. This right is, however, subject to a derogation when specific conditions are met. The main goal of the new provisions is to ensure a proper summon or information that was 'actually received' about the criminal proceedings and a truly enforceable right to a retrial against the decision rendered in absence.

7.7 *Ne Bis in Idem*

The final refusal ground that I intend to cover in this paper is commonly labelled *ne bis in idem* (or 'prior prosecution or 'prior jeopardy for same offence'). From a language perspective, this clause may appear in various slightly different forms. For example, article 8 of the 1978 treaty governing extradition between Germany and the USA reads as follows:

[101] See the extradition case of Vincent Brown – the first time in which the UK courts denied extradition (to Rwanda) based on arguments on trial unfairness (see notable list of extradition cases in Part B of this book).

[102] Art. 3, lett. g) of the 1990 UN Model treaty on extradition (see Appendix).

[103] A notable example of trial in absentia is that of Mr. Zine El Abidine Ben Ali, the Tunisian President from 1987 to 2011 (see list of notable extradition cases in Part B of this book). He was sentenced to life in prison for dozens of homicides as well as corruption, trafficking, and theft. However, he fled to Saudi Arabia and the Saudi authorities have continued to refuse his extradition to date.

[104] See the full text of the EAW Council Framework Decision (including the 2009 amendment) in the Appendix.

Extradition shall not be granted when the person whose extradition is requested has been tried and discharged or punished with final and binding effect by the competent authorities of the Requested State for the offense for which his extradition is requested.

Article 8 of the treaty governing extradition between France and the USA states that:

Extradition shall not be granted when the person sought has been finally convicted or acquitted in the Requested State for the offense for which extradition is requested.

In the EAW scheme there is a mandatory ground for non-execution of a European arrest warrant according to which extradition will be refused:

if the executing judicial authority is informed that the requested person has been finally judged by a member State in respect of the same facts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.

Readers are probably well aware that the *ne bis in idem* principle is included in many national, European[105] and international legal instruments. In the context of extradition, countries would typically deny surrender of a person sought for additional proceedings regarding the same conduct when the person has already received 'final' acquittal or conviction in the requested country. The rationale is clear: a person sought should not to be tried or punished twice for the same offence, regardless of the jurisdiction in which he had been subjected to criminal proceedings.

In the EAW scheme, the *ne bis in idem* protection not only applies to final judgments, but also pending proceedings. A country may then refuse extradition when a person is *presently* being prosecuted in the requested country for the same act on which the European arrest warrant is based, but has not received a final judgment[106] or when the requested country has decided not to pursue

[105] See article 4 para 1 of Protocol No 7 to the European Convention on Human Rights (*No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State)*. In the ECHR system, this is *one* of the rights from which no derogation is allowed even in time of war or other public emergency – a clear indication of the importance which is being attached to the principle in connection with fairness of criminal proceedings.

[106] Also sometimes referred to as the 'second' principle of *ne bis in idem* in the EAW scheme. See Article 4(2) of the 2002 EAW Council Framework Decision.

prosecution, has halted proceedings, or where a final judgment in *another* Member State has been passed on the same acts.[107]

As one would expect, the most troubling aspects of the *ne bis in idem* principle are what is to be considered the 'same offense' or 'same conduct'[108] and when a determination of responsibility is to be deemed 'final'.[109] Domestic case-law and practice will have to be fully investigate to appreciate the numerous variations in the interpretation of these concepts around the world.

8 Assurances[110]

Assurances are another peculiar feature of extradition law and practice. In simple terms, an assurance consists of a promise or guarantee that commits certain authorities of the requesting country to a particular course of conduct towards the person sought, once surrendered. This promise is clearly intended to facilitate the surrender process and suppress any concerns a requested party may have before surrendering the person sought. Assurances are critical, for example, whenever the authorities in charge of ordering extradition take issue with the overall treatment of the surrendered person.

Assurances are commonly sought in relation to the so called 'humanitarian' grounds of refusal which were discussed in §7.6.

The European Court of Human Rights was one of the first international courts to address the legality of extraditing fugitives to countries that applied capital punishment, absent assurances that the death penalty would not be enforced.[111] Without adequate assurances that the death penalty would not be

[107] Also sometimes referred to as the 'third' principle of *ne bis in idem* in the EAW scheme. See Article 4(3) of the 2002 EAW Council Framework Decision.

[108] In the EAW scheme, 'same acts' was deemed to be an autonomous concept of EU law. In *Mantello* (ECJ Judgment of 16 November 2010, §38) it was held that the interpretation of *same acts* cannot be left to the discretion of the judicial authorities of each Member State on the basis of their national law. It follows from the need for uniform application of EU law that, since that provision makes no reference to the law of the Member States with regard to that concept, the latter must be given an autonomous and uniform interpretation throughout the EU.

[109] In the EAW scheme, according to the ECJ, whether a case has been 'finally judged' must be determined by the law of the Member State in which judgment was delivered (see *Mantello*, ECJ Judgment of 16 November 2010).

[110] In *Othman (Abu Qatada) v. United Kingdom*, Application No 8139/09, the European Court of Human Rights considered the general human rights situation in that country as well as the particular characteristics of the applicant to look at whether the assurances received from Jordan were sufficient to remove any real risk of ill-treatment. Although a list of factors are considered, the Court has warned that the factors should not be treated as a 'tick box' list and that the circumstances of each person's case should be examined carefully, as explained by E. Grange–R. Niblock, *Extradition law a practitioner's guide*, 2015, Legal Action Group, 2nd ed., p. 101.

[111] See above, the discussion of the *Soering* case (§7.6 and also footnote n. 26).

sought, the Strasbourg Court prohibited extradition pursuant to Article 3 of the ECHR, which forbids inhuman and degrading treatment. Similarly, the Canadian Supreme Court has held that absent exceptional circumstances, assurances in death penalty cases are constitutionally required.[112]

It was however in a deportation case[113] that the Strasbourg court defined how a proper assessment should be made to evaluate the adequacy of an assurance at the international level.

First, the Strasbourg court held that it is only in rare cases that the general human rights situation in a country excludes accepting any assurances whatsoever.[114] Second, close attention must be paid to the language of the assurance. This will clarify, for example, whether an assurance is specific, general or vague. It is also important to examine who gave the assurance and whether that person or authority is effectively capable of committing the relevant authority of the requesting country. Third, the Court pointed to the length and strength of bilateral relations between the sending and receiving countries, including the receiving country's record in abiding by similar assurances. Finally, the Court suggested that compliance with the assurances be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the person's lawyers.

These principles can be easily transposed to extradition cases.

As per the distinction between a general and a specific assurance in terms of quality, poor prison conditions recently offered a notable example in an extradition proceeding in the UK. In the 2014 EAW case of *Badre,*[115] the prosecution sought to rely on the following assurance by the Italian Government:

Our Ministry assures you that should the Somali national Abdi Badre Hayle be surrendered by the authorities of the UK under the EAW, he will be kept in conditions complying with the provision of Article 3 of the European Convention on Human Rights. Following his surrender Abdi Badre Hayle shall not be necessary incarcerated in the prisons of Busto Arsizio or Piacenza.[116]

On appeal, the High Court remarked on the non-specific nature of the assurance and the fact that it failed to address where the person sought would be eventually confined. The mere exclusion of two article 3-non compliant prisons (which were the ones that led to the 2013 pilot judgement *Torreggiani*[117] against Italy) was deemed inadequate.

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[112] *United States v. Burns*, 298 F.3d 523 (6th Cir. 2002).

[113] *Othman (Abu Qatada) v. United Kingdom*, above footnote 110.

[114] *Othman (Abu Qatada) v. UK*, above footnote 110., §188.

[115] The case is reported in the list of notable extradition cases in Part B of this book.

[116] The full text of this assurance is reported by Grange-Niblock, above, footnote 110, pag 101.

[117] See above, footnote n. 94.

As per the adequacy of who gives an assurance, the requested country should consider the ability of the issuing person or body to carry out the assurance, taking into account legal limitations of the executive authority, such as the separation of powers doctrine, jurisdictional limits, and judicial sovereignty. More specifically, doubts about the adequacy of an assurance may arise when *judicial authorities* are requested to give assurance on the future decisions of other judicial authorities. Imagine an extradition request following a *trial in absentia* in the requesting country. In the context of the EAW scheme, the requested country may seek an assurance that the person sought will be granted a retrial once surrendered. If the judicial authority in charge of granting a retrial is different from the judicial authority that issued a EAW, would a statement from the issuing judicial authority be considered an adequate assurance?

In the event that a requesting country does not uphold their assurance, minimal remedies are available after a breach. While it is true that sovereign countries are not subject to a binding international authority (hence there would be no immediate legal repercussions for a country that does not follow through with an assurance) it is nevertheless also true that they may be conscious about adverse future consequences (i.e. denial of future extradition requests) in case of breach.

9 Notable International Extradition Cases

Despite the rather long list of refusal grounds and procedural safeguards that apply to international extradition proceedings, readers should be aware that most surrenders occur relatively seamlessly and surrender is more often granted than denied in the everyday practice of domestic courts across the world – in even more so within the EAW scheme.

Even if very few executive or judicial authorities across the world would admit to subscribe to a 'rule of non-inquiry',[118] most extradition lawyers in all jurisdictions would agree that fighting an extradition request always was and still is an extremely difficult task. The main reason is that the authorities of a requested country inevitably move from the assumption that the submissions made and assurances given by foreign counterparts should be initially trusted. This is not to overlook that when refusal grounds are taken seriously an extradition case may also result in delayed or denied surrender.

[118] The rule of non-inquiry was famously laid down by Justice John Marshall Harlan of the United States Supreme Court in the 1901 decision *Neely v. Henkel:* 'When an American citizen commits a crime in a foreign country he cannot complain if required to submit to such modes of trial and to such punishment as the laws of that country may prescribe for its own people, unless a different mode be provided by treaty stipulation between that country and the United States'. For discussion of the origin, development and theory of the rule of non-inquiry see J. T. Parry, *International Extradition, the rule of non-inquiry, and the problem of sovereignty*, in *Boston University Law Review*, 2010, vol. 90. p. 1978-1987.

In Part B of this book, I chose to report thirty-five notable extradition (and rendition) cases that offer an array of submissions, arguments and outcomes. Some are purely 'international' extradition cases while others belong to the EAW scheme. Although I based my choice on a variety of reasons (notoriety of the person sought, significance of the arguments raises, etc) I admit that the selection is largely arbitrary: there are many cases that are quoted in this paper that are not listed in Part B and there would certainly be many more that deserved to be included. For each case, I mentioned the countries involved, a crucial date, the facts of the case and the main legal 'extradition' arguments that were raised. If the case is still pending, I recommend readers to find reliable sources for recent updates. I also listed – whenever possible – the lawyers acting for the requested persons, in an effort to further pursue my overambitious goal to contribute to the development of an international community of extradition experts.

Notable International Extradition Cases

Political Leaders

Vincent Bajinya (aka Vincent Brown)

(also with Charles Munyaneza, Emmanuel Nteziryayo and Célestin Ugirashebuja)

Extradition requested by:
Rwanda to the UK

Countries involved:
UK | Rwanda

Extradition rejected on:
28 July 2017

Lawyers acting for the persons sought:
for Vincent Brown: Alun Jones QC, Sam Blom-Cooper
for Charles Munyaneza: Tim Moloney QC, Ian Edwards
for Emmanuel Nteziryayo: Diana Ellis QC, Joanna Evans
for Celestin Ugirashebuja: Edward Fitzgerald QC, Rachel Kapila, Kate O'Raghallaigh

Charges

Genocide; conspiracy to commit genocide (1994).

Facts of the case

Vincent Brown was accused of being a close associate of Rwandan President, Juvénal Habyarimana, and a member of the President's inner circle: the Akazu. In a 2006 arrest warrant, the Government of Rwanda alleged his involvement in two killings during the 1994 Rwandan genocide in which an estimated 800,000 Rwandans (mostly Tutsis, but also including some Hutus) died between April and May 1994. Specifically, the government claimed that Bajinya organized roadblocks in the streets of Rwanda in order to kill the Tutsi people. Furthermore, Bajinya was accused of arming and taking charge of the local Interahamwe, an extremist Hutu militia. After the conflict ended, Bajinya moved to the UK and claimed asylum with three other men. They were all eventually arrested in 2006 and remanded in custody in the UK.

Extradition proceedings & key legal arguments

Since there is **no bilateral treaty** on extradition between Rwanda and the UK, the two countries entered into a series of memoranda of understanding

relating to the extradition of Bajinya and the other persons sought. On 6 June 2008, Judge Evans of the Westminster Magistrates' Court, after protracted extradition hearings held intermittently between 23 September 2007 and 9 May 2008, decided that they could be extradited to Rwanda. On 1 August 2008, the Secretary of State signed orders to the effect that the four persons sought be extradited to Rwanda to face trial for crimes of genocide. Bajinya appealed the extradition order before the High Court.

The question for the High Court was whether, if the persons sought were returned to Rwanda for trial, they would suffer a real risk of a **flagrant denial of justice**. The High Court did not contest the evidence that implicated the persons sought in acts of genocide in 1994. It focused only on the question of **trial fairness** in Rwanda.

The litigation implicated many aspects of the UK domestic statute on extradition (the *2003 Extradition Act*). Specifically, two provisions were invoked: section 81(b), which bars extradition if the individual for whom extradition is contemplated 'might be prejudiced at his trial or punished, detained, or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation, or political opinions' in the requesting country; and section 87(1), which requires the judge to decide whether the person's extradition 'would be compatible with the [ECHR] rights within the meaning of the Human Rights Act 1998'.

The High Court determined that these provisions 'in effect impose fair trial requirements in the courts of the requesting State'. The High Court identified Article 6 of the European Convention on Human Rights as informing *section 87(1)*, and specifically underscored Article 6's right to 'a fair and public hearing within a reasonable time by an independent and impartial tribunal'.

In 2009, the High Court concluded that if the accused were extradited to face trial in the High Court of Rwanda, they would suffer a real risk of a flagrant denial of justice by reason of: a) their likely inability to adduce the evidence of favourable witnesses; or b) the continuing interference by the Rwandan government in the affairs of the Rwandan judiciary. This decision is thought to be the first time an English court has ever blocked an international extradition request on the grounds that it would violate Article 6 of the European Convention on Human Rights, a safeguard of the right to a fair trial.

Outcome

In 2013, a fresh extradition request was issued again by Rwanda on the basis that a number of major reforms in the domestic rules of procedure (including improvements in witness protection programs, etc.) would make criminal proceedings against the persons sought compliant with international standards of human rights protection. The extradition request was again discharged by the Westminster Magistrates' Court in December 2015. The ruling stated that

'as Rwanda appears to be an authoritarian repressive state, there is evidence that the state threatens, kills, or otherwise eliminates those it considers to be its opponents. Such evidence shows that suspects are sometimes tortured in secret camps where basic human rights are ignored'. The refusal to surrender was upheld by the High Court of Justice in 2017 on the basis that if extradited, the persons sought would be at risk of a flagrant denial of a fair trial in Rwanda.

Zine El Abidine Ben Ali

Extradition requested by:
Tunisia to Saudi Arabia

Countries involved:
Tunisia | Saudi Arabia

Extradition requested by Tunisia on:
20 February 2011

Lawyers acting for the person sought:
Tunisia: Hosni Beji
France: Jean-Yves Le Borgne

Charges

Murder, voluntary manslaughter, corruption, drug use, drug trafficking, weapons trafficking, trafficking in archaeological artefacts, theft, illegal possession of cash and jewelry, inciting disorder (2010).

Facts of the case

Zine El Abidine Ben Ali was the President of Tunisia from 1987 to 2011. His regime was widely perceived as corrupt among Tunisian people, with allegations of stealing public funds for the benefit of his family and reports of torturing political opponents. During the so called 'Tunisian Revolution' (held between December 2010 and January 2011), he and his security forces were allegedly implicated in the killings of dozens of protestors. On January 14, 2011, he resigned the presidency, fled the country, and has since been living in Saudi Arabia. After fleeing the country, Tunisian authorities discovered hidden drugs, weapons, cash, and archaeological artefacts in the presidential palace.

Extradition proceedings & key legal arguments

Ben Ali and his family have been living in Saudi Arabia since they fled Tunisia on January 14, 2011. On January 26, 2011, Tunisia issued an international arrest warrant via Interpol for Ben Ali, his wife, and five family members. At the time the charges were filed, Ben Ali was accused of property theft, illegally acquiring assets, and illegally transferring foreign currency. In 2011, Tunisia formally issued an extradition request to Saudi Arabia for Ben Ali, adding charges of voluntary homicide linked to deaths of protesters during the Tunisian Revolution.

The government of Saudi Arabia rejected the extradition request, and **no formal extradition proceedings took place** before the courts of Saudi Arabia. Saudi Arabia welcomed Zine El Abidine Ben Ali and his family due to the **exceptional circumstances** surrounding the Tunisian Revolution, and cited **Islamic hospitality** as a reason for their refusal to extradite. Furthermore, Ben Ali was allegedly in **poor health** during this time.

In June 2011, Tunisian authorities decided to try Ben Ali and his wife ***in absentia***. Since Tunisian law at the time prohibited a foreign lawyer from defending a client *in absentia*, Ben Ali was represented by five public defenders. The Tunisian courts held a series of military and civilian trials over the next 12 months while Ben Ali continued to live abroad. On June 20, he was sentenced to 35 years in jail for embezzlement of public funds. On July 4, 2011 he was sentenced to 15 years in prison for trafficking drugs, weapons, and archaeological artefacts. On July 28, he was sentenced to 16 years in prison for corruption and property fraud. On June 13, 2012, Ben Ali was sentenced to 20 years in prison for inciting disorder, murder, and looting. Later that day, he was sentenced to life in prison for 23 killings that occurred during the revolution. On July 19, he received a second life sentence for his complicity in 43 killings during the revolution.

Current developments

From June 2011 to June 2012, Ben Ali was tried and **convicted in absentia** in five military and civilian trials held in Tunisia. He was sentenced to life in prison for dozens of homicides during the revolution, as well as other convictions including corruption, trafficking and theft. The government of Saudi Arabia has continued to refuse to consider the extradition application and no judicial proceeding was held before national courts. There have been no further extradition requests from the Tunisian government, and Ben Ali remains in Saudi Arabia. In the meantime, the Tunisian government has recovered several million dollars (held in Swiss bank accounts) that were owned by Ben Ali and his wife. In 2013, the UN Stolen Asset Recovery team returned to Tunisia $29 million held in a Lebanese bank account belonging to Ben Ali's wife.

Hissène Habré

Extradition requested by:
Chad to Senegal | Belgium to Senegal

Countries involved:
Chad | Senegal | Belgium

Sentenced to life in prison on:
30 May 2016

Lawyers acting for the person sought:
France: François Serres
Senegal: Ibrahima Diawara, Doudou Ndoye, Mbaye Sene, El Hadji Diouf (dismissed)

Charges

Crimes against humanity of rape, sexual slavery, murder, summary execution and inhuman acts, torture, inhumane treatment, unlawful detention and cruel treatment and torture, during his rule of Chad (from 1982 to 1990).

Facts of the case

Hissène Habré was the president of Chad from 1982 to 1990, until he was overthrown and fled to Senegal. His regime was responsible for approximately 40,000 deaths and the torture of 200,000 individuals according to the Chadian Commission of Inquiry.

Extradition request & legal proceedings

While living in Senegal in 2000, Habré was arrested and charged with torture, barbarous acts and crimes against humanity. He was then indicted for those accusations and placed under house arrest. However, a Senegalese court dismissed the indictment in 2001 because the crimes were committed in Chad and the court lacked **jurisdiction**. Furthermore, 'crimes against humanity' were not as such punishable under Senegalese criminal law.

On 27 September 2001, Senegal agreed to restrict Habré from leaving the country, pending an extradition request from Belgium. This request for extradition was based on charges filed in Belgium by Chadian victims who had obtained the Belgian citizenship.

After four years of investigation on this matter, Belgium issued an **international arrest warrant** and an extradition request on 19 September 2005, charging Habré with crimes against humanity, war crimes and torture. Belgian law allows

the prosecution of crimes against humanity committed in other countries based on the controversial principle of **universal jurisdiction**.

However, on 25 November 2005, the Dakar Court of Appeal in Senegal rejected the extradition request, holding that it lacked jurisdiction for the extradition of Habré. The court reasoned that Habré was **immune** from the court's jurisdiction because he was a Head of State at the time the relevant conducts had taken place.

Over the next few years, Senegal conferred with the United Nations (UN) and the African Union (AU) to establish sufficient jurisdiction over Habré in order to proceed with his case. In 2006, the AU mandated that Senegal prosecute Habré 'on behalf of Africa' with **guarantees** of a fair trial. In 2007 and 2008, the government of Senegal passed legislation and a constitutional amendment to allow Senegalese courts to prosecute past cases of genocide, crimes against humanity, war crimes, and torture committed outside of Senegal. In August of 2008, a Chadian court sentenced Habré to death, ***in absentia***, for crimes against humanity.

In February 2009, Belgium filed an application through the ICJ to force Senegal to either prosecute Habré or extradite him to Belgium. The basis of the claim was that Senegal was obligated to prosecute him under the UN Convention against Torture, to which Senegal and Belgium are signatories. Belgium brought this claim under **passive personality jurisdiction** arising from a complaint filed by a Belgian national of Chadian origin.

On 28 May 2009, the ICJ rejected Belgium's request, holding that the circumstances did not require the ICJ intervention. The court granted Senegal permission to continue with the case against Habré, with Senegal agreeing to restrict him from leaving the country. On November 18, 2010, the Court of Justice of the Economic Community of West African States (hereinafter, the ECOWAS Court) ruled on an application brought by Habré's lawyers in October 2008. His counsel claimed that the laws passed in Senegal were being applied to his case retroactively, which was in violation of Art. 15 of the International Covenant on Civil and Political Rights which forbids retroactive criminal convictions.

The ECOWAS court agreed that the case could not proceed under Senegalese law. However, the Court reasoned that because his crimes were illegal under international law at the time they were committed and because of the AU's mandate in 2006 requiring Senegal to prosecute him, Senegal could prosecute Habré within an *'ad hoc special tribunal of an international character'*.

From 2011 to 2012, Belgium issued three more extradition requests to Senegal. Senegal continued to stall in bringing a criminal case against him, citing lack of funds to proceed with such a case.

Finally on July 21, 2012 the ICJ ordered Senegal to either move forward with Habré's prosecution 'without delay' or to extradite him to Belgium.

After a change in government in Senegal in 2012, the new government created the **Extraordinary African Chambers** in Senegal's court system on

August 22, 2012 with the support of the AU. Habré was arrested on 30 June 2013 and was tried within this special international tribunal. He was charged with crimes against humanity, war crimes and torture. Habré's trial began on July 20, 2015 thus satisfying the ICJ order to prosecute or extradite him.

Outcome

On May 30, 2016, Habré was found guilty of crimes against humanity, ordered killings, torture, rape, and sexual slavery. The Extraordinary African Chambers sitting in Dakar, Senegal sentenced Habré to life in prison. The outcome of this case made Habré the first former head of state to be convicted for crimes against humanity and torture, in front of a domestic court of another country.

Jamil Mukulu

Extradition requested by:
Uganda to Tanzania; Democratic Republic of the Congo to Tanzania

Countries involved:
Uganda | Tanzania | Democratic Republic of the Congo

Extradition granted by Tanzania courts to Uganda on:
25 June 2015

Lawyers acting for the person sought:
Tanzania: Martin Rwehumbiza
Uganda: Caleb Akala

Charges

Terrorism, aiding and abetting terrorism, murder, attempted murder, aggravated robbery, crimes against humanity (1998-2014).

Facts of the case

Jamil Mukulu was the leader of the Allied Democratic Forces (ADF), an extremist Islamic rebel militia group that still operates within Uganda and the Democratic Republic of the Congo (DRC). The ADF is alleged to have connections to Al-Qaeda and Al-Shabaab. Throughout the 1990s and early 2000s, the ADF conducted an insurgent campaign of terrorism against the Ugandan government while operating from mountain bases along the Uganda-DRC border. Throughout a 20-year period, the ADF was reportedly responsible for murdering hundreds of people in several massacres, several bombings in the Ugandan capital city of Kampala, and multiple instances of looting. According to the Uganda authorities, Mukulu took an allegedly active role in the 8 June 1998 massacre at Kichwamba Technical Institute in western Uganda. The incident led to 80 students burning to death in their dormitories, while another 100 were abducted during the attack. The DRC authorities also allege that Mukulu acted as an accessory to the assassination of Colonel Mamadou Ndala on 2 January 2014. Before being assassinated, Colonel Ndala was leading the fight against the ADF and other rebel militia groups near the DRC border with Uganda.

Extradition proceedings & key legal arguments

On 14 February 2011, upon the request of Ugandan authorities, Interpol issued a notice for Mukulu's arrest on charges of terrorism, murder, and treason. On 17 November 2014, a DRC military tribunal convicted Mukulu, ***in***

absentia, for terrorism and insurrection, and sentenced him to the death penalty for the assassination of Colonel Ndala. Given the current moratorium on capital punishment in the DRC, a life sentence is the most likely outcome if Mukulu is ever arrested in the DRC. Mukulu was instead arrested in Tanzania on April 28, 2015 for illegal possession of firearms. Shortly after the disclosure of his identity, the Tanzanian police transferred Mukulu to Dar es Salaam, in Tanzania.

On 30 April 2015, the Ugandan authorities requested his extradition from Tanzania. The extradition hearing began on 8 May 2015. A few days later, the DRC also issued an extradition request for Mukulu to Tanzanian authorities. Since the extradition hearing related to the Uganda request was still ongoing, no significant judicial action was taken on the request from DRC. During the extradition hearing in Tanzania, Mukulu argued that he **would not receive a fair trial** in a court of Uganda due to his political and ideological views, contrary to those of the Ugandan government. He also alleged that the prosecution in the extradition hearing had not provided **sufficient evidence** to place Mukulu at the scene of any of the murders indicated in the charge. Finally, Mukulu alleged that the charges against him were **political** in nature and therefore his extradition was barred by Art. 6 of the Extradition Treaty between Tanzania and Uganda. The court disagreed with Mukulu's submissions and considered the evidence submitted by the prosecution sufficient to establish a prima facie case against him. On 25 June 2015, the Tanzanian judiciary allowed the surrender of Mukulu, and he was eventually extradited on 20 July 2015.

Current developments

After being extradited to Uganda, Mukulu faced charges for terrorism, murder, and treason. His pre-trial hearing in the International Crimes Division (ICD) Court of Uganda began in September 2015. In 2018, Judge Eva Luswata indicated August 30th, 2019 as the date when the court will rule whether Mukulu (along with his 37 co-suspects) will be put in front of a three-judge panel to face the aforementioned charges.

Abdullah Öcalan

Extradition requested by:
Turkey to Italy | Germany to Italy

Countries involved:
Italy | Turkey | Germany | Kenya

Extradition requested on:
26 November 1998

Lawyers acting for the person sought:
Turkey: Irfan Dundar, Ibrahim Bilmez, Ahmet Avsar
Italy: Giuliano Pisapia, Luigi Saraceni
Germany: Britta Bohler

Charges

Murder, extortion, and separatist activity in connection with his activity as the leader of the Kurdish Workers' Party (PKK) (1978 onwards).

Facts of the case

In 1978, Abdullah Öcalan founded the PKK (Partiya Karker Kurdistan), a left-wing guerrilla group fighting for an independent Kurdistan. The group was responsible for a series of violent attacks against government forces and civilians in Turkey. Since its founding, the PKK has been categorized as a terrorist organization by the USA, EU, Turkey and a large portion of the international community. Öcalan was accused of ordering the deaths of nearly 37,000 people, mostly Kurds. He was based in Syria until 1998, when pressure from the international community demanding his surrender escalated and he was forced to leave the country. Throughout the 1990s, Öcalan was Turkey's most wanted person and he spent years trying to obtain political asylum in countries throughout Europe.

Extradition proceedings & key legal arguments

In 1998, Öcalan left Syria after Turkish officials threatened to invade Syria if the country refused to surrender him. After a brief stay in Russia, on 12 November 1998, Öcalan left Moscow with a false passport and flew to Rome. Upon his arrival, he was arrested by Italian police based on a) an outstanding arrest warrant from Germany and b) an extradition request from Turkey. Germany had issued an **international arrest warrant** for Öcalan in 1990 based on homicide charges connected to the murder of a PKK defector. The warrant was

further amended to include charges for arson attacks on Turkish businesses in Germany.

On 21 November 1998, the Rome Court of Appeal rejected Turkey's extradition request based on humanitarian grounds. The court's argument was that no extradition from Italy may be allowed to countries where they may face the death penalty, in accordance with the case-law relating to the European Convention on Human Rights and the current interpretation of the Italian Constitution. At the time, Turkish law allowed capital punishments for the charges in question. Capital punishment was later abolished in 2004.

The Italian court also ordered that Ocalan remain in custody pending the outstanding arrest warrant from Germany. After rejecting Turkey's request, Italian authorities encouraged Germany to enforce its arrest warrant for Öcalan and request extradition but the then German chancellor, Schroder refused to request his **extradition** and reasoned that he wanted to maintain peace between the Turkish and Kurdish populations in Germany following the recent uproar surrounding his arrest. In 1999, Italian authorities denied Ocalan political asylum request and some assertions were made by government officers that Öcalan would be prosecuted if he remained in Rome. On 16 January 1999, Öcalan (allegedly) secretly left the country and flew to Russia and then Greece. Greece then agreed to provide him temporary shelter in its embassy in Kenya. Öcalan arrived at the Greek embassy in Nairobi, Kenya with a false passport on 2 February 1999 but was then captured by Turkish security forces on his way to the Nairobi airport on 15 February 1999. No proper extradition proceeding was held in Kenya and Ocalan was immediately transferred by plane to Turkey.

Outcome

Öcalan is serving a life sentence in solitary confinement in a prison on Imrali island in Turkey. The conditions of Öcalan's detention were found to be in breach of the European Convention on Human Rights by the Strasbourg court in 2014. The court held that the PKK leader's isolation and inability to receive visitors, bolstered by his life sentence, constituted inhuman treatment under Article 3 of the convention. However, because of Öcalan's improved treatment (access to a television set, telephone calls, and more frequent visitors), the court held that his confinement after 2009 did not meet the minimum threshold of seriousness to constitute inhuman treatment. Despite these improvements, scandal and uncertainty around his confinement remains. In 2019, 3,000 Kurdish supporters partook in a hunger strike demanding Öcalan be given back access to his family and lawyers while imprisoned. The standoff ended in May of 2019 with the Turkish government lifting the visitor ban.

Irakli Okruashvili

Extradition requested by:
Georgia to Germany | Georgia to France

Countries involved:
Georgia | Germany | France
France denied extradition on:
10 September 2008

Lawyers acting for the person sought:
Georgia: Eka Beselia
France: Louis Marie de Roux, Jean Eric Malabre

Charges

Extortion, bribery, criminal negligence (2007); misuse of power (abuse of office while Georgia's defense minister), money laundering (2008); and formation of an illegal armed group (2011).

Facts of the case

Irakli Okruashvili served as Defense Minister of Georgia from 2004 to 2006 under President Saakashvili. After resigning from his position, Okruashvili made allegations against the President related to the deaths and attacks of political opponents, but soon thereafter was accused of extortion, bribery, and criminal negligence. In October 2007, he was arrested by the Georgian police, confessed to the charges, and was then released on bail.

Extradition proceedings & key legal arguments

Soon after his release on bail, Okruashvili requested and obtained a visa from the French Embassy in Georgia. He left Georgia and travelled to Germany in November 2007 where he **applied for asylum** in the EU. Georgia issued an arrest warrant via Interpol on 14 November 2007, and Okruashvili was eventually arrested in Berlin, Germany on 27 November 2007.

On 9 January 2008, Germany transferred Okruashvili to France because he had entered Europe on a French Schengen visa. At the time, under Art. 9 of the Dublin II Regulation (*Council Regulation (EC) No. 343/2003 of 18 February 2003*), the member state which issued a visa to an **asylum applicant** would be responsible for reviewing the asylum application—in this case, France.

Germany also deferred to France in addressing the question of whether to grant or deny Georgia's extradition request. Okruashvili and his Georgian lawyer claimed that the extradition request was **politically motivated**, rather than

based on legitimate grounds of law. Further, Okruashvili dismissed all charges against him as false accusations. On January 30, 2008, he was released on bail in Paris (France).

On 28 March 2008, a Georgian court tried Okruashvili **in absentia**, found him guilty, and sentenced him to an 11-year imprisonment for extortion and bribery. His Georgian lawyer refused to partake in the proceedings, claiming the case to be a miscarriage of justice.

France granted Okruashvili political asylum on 23 April 2008 and on September 10 of the same year the Paris Court of Appeal formally rejected Georgia's extradition request.

Outcome

After the rejection of Georgia's extradition request, Okruashvili remained in France until 2012. On 20 November 2012, Okruashvili returned to Georgia, after the Georgian Dream party defeated the former majority party in the national election. He was arrested upon his arrival in Georgia in connection with his 11-year prison sentence as well as additional charges brought against him in 2011.

On 11 January 2013, the Georgia Court of Appeal overturned Okruashvili's conviction and released him on bail. By 7 February 2013, all charges against him were either cleared by the court or dropped by the relevant Prosecution Office. In April 2014, Okruashvili entered the election for Mayor of Gori, but a court ruled that he was barred from the election because he did not meet the minimum two-year residency requirement, due to his time spent abroad in France. In 2019, he founded a new political party (named 'For a Victorious Georgia') to compete in future Georgia's national elections.

Augusto José Ramón Pinochet Ugarte

Extradition requested by:
Spain to the UK

Countries involved:
Chile | Spain | UK

Arrested on:
16 October 1998

Lawyers acting for the person sought:
Spain: J.M. Stampa Braun, F. Escardó
UK: Clare Montgomery, Clive Nicholls

Charges

Genocide, terrorism and torture throughout his dictatorship in Chile (1973-1990)

Facts of the case

Augusto Pinochet was the President of the Chilean Military Junta, and later served as the President of Chile from 1973 to 1990. Pinochet was accused of ordering the killings, enforced disappearances and torture of more than 100 political dissidents. Over 3,500 people disappeared or were killed during his 17-year rule.

Extradition proceedings & key legal arguments

In September 1998, Pinochet travelled to the UK to undertake surgery. At the time, he held a diplomatic passport issued by the Chilean government that was supposed to grant him immunity from prosecution. London filed an **extradition request** to the UK on murder, torture, and genocide charges pursuant to the 1957 European Convention on Extradition. This is because the Spanish Supreme Court previously held that the courts of Spain have jurisdiction to try him based on the so called 'universal jurisdiction theory,' which is embedded in the domestic *Judiciary Act* (*Ley Orgánica del Poder Judicial*).

Pursuant to the international warrants, dated 16 and 23 October 1998, two domestic provisional warrants for his arrest were passed in the UK under the relevant domestic legislation in force at the time (*s. 8(1)(b)* of the *Extradition Act 1989*). Once arrested, Pinochet immediately applied to the Queen's Bench Divisional Court to quash the warrants. While the 16 October warrant was quashed and nothing turned out of it, the quashing of the 23 October warrant

was stayed to enable an appeal to be taken to the Appellate committee of the House of Lords (the court of last resort for the UK at the time).

Counsel for Pinochet argued that he was entitled to **immunity from prosecution**, both as a former Head of State and under the 1978 Amnesty Act *(Ley de Amnistía de 1978 – Decreto Ley 2191*) passed by the military Junta in Chile, which granted a general amnesty to those involved in the political crimes committed between 1973 and 1978. Furthermore, his counsel claimed that Pinochet's alleged **poor health** made him unfit to stand trial in Spain.

On 25 November 1998, the Appellate committee of the House of Lords held on a narrow majority ruling that Pinochet was not entitled to immunity according to international or UK law, and cleared his extradition to Spain. A key part of the ruling stated that the development of international law since WWII justified the conclusion that in 1973, genocide, torture, hostage taking, and crimes against humanity (during an armed conflict or in peace time) were condemned as international crimes deserving of punishment.

However, in December 1998, the House of Lords decided to set aside its prior ruling on the grounds that one of the Lords (who casts the deciding vote) failed to disclose his ties to Amnesty International which, incidentally, had been admitted as an intervener in the proceeding.

In March 1999, the Lords ruled again on the matter and stated that the **double criminality** rule required that Pinochet be prosecuted only for crimes committed after 1988, the year in which the UK implemented legislation for the UN Convention Against Torture. This invalidated most, but not all, of the charges against Pinochet. However, the Lords ultimately decided that surrender to Chile should be granted. Based on this decision, in April 1999 the Home Secretary issued an authority to proceed, thus allowing extradition proceedings to continue for the remaining charges.

Later in 1999, Pinochet appealed to the UK government claiming, for the second time, that his poor health conditions made him **unfit to stand trial**. On November 1999, the Chilean embassy in the UK requested a new medical check-up to confirm that Pinochet's health conditions were deteriorating. On 11 January 2000, Jack Straw, the UK Home Secretary, **ordered Pinochet's release on health grounds**, after the last medical test stated that Pinochet was unfit to appear before a court of law. After being declared unfit to stand trial, Pinochet was then allowed to return home to Chile.

Outcome

Pinochet returned to Chile as a free man in 2000. Later that year, Pinochet was stripped of his immunity from prosecution - which he had enjoyed as a benefit from being a former president - and was ordered to stand trial for the human rights abuses he perpetrated. The charges were dropped in 2002 after Chile's Supreme Court upheld the prior ruling that Pinochet was mentally incapable of defending himself in court. He passed away in 2006, never having been subjected to criminal conviction for any of the crimes and human rights abuses allegedly committed during his rule.

Carles Puigdemont

Extradition requested by:
Spain to Belgium | Spain to Germany

Countries involved:
Spain | Belgium | Germany

Arrested in Germany on
25 March 2018

Lawyers acting for the person sought:
Belgium: Paul Bekaert, Clara Ponsati, Jaume Alonso-Cuevillas
Germany: Wolfgang Schomburg

Charges

Rebellion, sedition, and misuse of public funds (2017).

Facts of the case

After a political career as a journalist and politician in Catalonia, Carles Puigdemont was removed from the office of President of the Government of Catalonia by the Spanish Government following the unilateral Catalan declaration of independence that was issued after the referendum held on 1 October 2017. The Catalan independence referendum was upheld despite the Spanish Constitutional Court ruling that it breached domestic constitutional law. Following the removal of the Catalan Government by the Spanish executive authorities, a number of former members of the regional Government were taken into custody and charged with rebellion, sedition, and misuse of public funds for pursuing Catalan independence. By that time, Carles Puigdemont and four of his allies had already exiled themselves into Belgium. The charges could potentially lead to a prison sentence of up to 25 years.

Extradition & key legal arguments

The Spanish judicial authorities issued a **European Arrest Warrant** (EAW) against Puigdemont in late October 2017 and Puigdemont was arrested in Belgium a few days later. However, in early December 2017, Spanish Supreme Court Judge Pablo Llarena **withdrew the EAW** for the five men, alleging that the ruling was based upon a discrepancy between Belgian and Spanish law that would limit the charges under which the Catalans could be extradited and therefore be charged on their return. The national warrant against the suspect was however upheld. The rationale for the withdrawal of the EAW was said to be

that counsel for the persons sought in Belgium was ready to argue that the definitions in Belgian law for the crimes of sedition and rebellion would not match the elements of crime in the Spanish statute books. Since extradition through a EAW in certain cases still requires **double criminality**, the only charge on which the Belgian judicial authorities would have agreed to extradition was believed to be the lesser one of misuse of public funds, for which the persons sought would only be fined and banned from holding public office (but not subject to imprisonment).

In March 2019, Puigdemont was again arrested in Germany, while returning to Belgium from a conference in Finland. The day before the arrest, a Spanish judge **re-issued the EAW** based upon the (still standing) national warrant.

In July 2018, the Higher Regional Court Schleswig approved Puigdemont's extradition, but ruled that he could be sent back to Spain only for **misuse of public funds, not for the rebellion charges**.

Pursuant to the principle of **double criminality**, the court thus rejected the German state prosecution argument that the Spanish crime of rebellion could be equivalent to the German crime of 'high treason against the Federation of Germany' (pursuant to s. 81 of the German criminal code).

According to the **rule of specialty**, if Puigdemont and the other separatist leaders had been extradited for charges of misusing public funds, they would have only been allowed to be tried in Spain on those charges. For this reason, Spanish judge Llarena withdrew the EAW once again. The ruling of Judge Llarena criticized the German court's decision, arguing that it showed 'a lack of commitment' in pursuing the fugitives.

Current developments

By the end of July 2018, Puigdemont had returned from Germany to Belgium. In March 2019 Puigdemont announced that he would be a candidate of the 'Junts per Catalunya' (Together for Catalonia) party for the elections of the European Parliament, which were held on 26 May 2019. He won a seat but Spain's electoral authority blocked his attempt to make his election effective. Puigdemont pledged to take his electoral case to the Court of Justice of the European Union.

Abu Salem Abdul Qayoom Ansari (aka Abu Salem)

Extradition requested by:
India to Portugal

Countries involved:
India | Portugal

Extradited to Portugal on:
11 November 2005

Lawyers acting for the person sought:
Portugal: Manuel Luis Ferreira
India: Saba Qureshi

Charges

Murder, criminal conspiracy, attempted murder, extortion, kidnapping, causing grievous injury by dangerous weapons.

Facts of the case

Abu Salem is a billionaire gangster, prominent member of the so called Dawood company, an Indian-based organized crime syndicate that began operating in the late 1970s. On 12 March 1993, the group coordinated a series of 13-bomb explosions across Mumbai killing over 250 people and injuring nearly 1,000 people. Salem was not only charged for his connection to the bombings: Indian authorities also sought to question him regarding over 60 murders, cases of extortion and kidnappings involving Bollywood producers and actors. In the late 1990s, Salem reportedly left the Dawood Company and, fearing repercussions, fled India and moved to Dubai (United Arab Emirates). He was arrested there in 2001, but was released on bail shortly thereafter since Indian authorities failed to provide sufficient evidence for his extradition to India.

After his release in Dubai, Salem fled to Lisbon (Portugal). He and his girlfriend were arrested in Lisbon in September 2002 on charges of travelling with false documents. Although **no bilateral extradition treaty** was in force at the time between India and Portugal, Indian authorities entered into discussions with the Portuguese authorities for the possibility of an *ad hoc* extradition. India ultimately issued its extradition request in December 2002.

Extradition proceedings & key legal arguments

Two proceedings against Salem began in October of 2003. The first was an extradition proceeding while the second was a criminal trial on charges of carrying false travel documents.

In November of 2003, a Portuguese criminal court sentenced Salem to four and a half years in prison for possession of forged travel documents and for resisting arrest. The High Court of Lisbon granted Salem's extradition in July 2004 only for the charge that did not carry capital punishment, due to the prohibition (under Portuguese law) of extraditing persons to countries where they would face the **death penalty**. Indian authorities appealed and gave assurances that Salem would not be given the **death penalty** in an attempt to secure extradition to India for the remaining charges. The Supreme Court of Portugal granted the appeal and ordered extradition for all the charges mentioned in the extradition request. On 11 November 2005, Salem was transferred to India to stand criminal prosecution on the condition that he would not face additional charges and would not face the death penalty or imprisonment for longer than 25 years for any one crime. After his extradition, however, Indian authorities brought additional charges against Salem. Consequently, Salem filed an appeal in Portugal aiming to rescind his extradition for this violation. He asserted that additional charges carried the possibility of the death penalty, and he was thus charged in violation of the extradition agreement. On 17 January 2012, the Supreme Court of Justice of Portugal ruled that the extradition agreement was indeed violated, though there were no protocols in place between the two countries for dealing with a violation of the **principle of specialty**, a principle of international law according to which if a person is extradited to stand trial in another country, he/she can be tried only for the charges for which the extradition was requested. Bringing other pre-existing offences or charges relating to earlier conducts was a clear violation of this principle, according to the Portuguese judicial authorities.

Salem also filed an appeal in India on the same basis as his appeal in Portugal. On 5 August 2013, the Supreme Court of India permitted Indian prosecutors to withdraw the additional charges brought against Salem. The court rejected his appeal, ruling that his extradition remained valid and that his hearings could proceed.

Outcome

On 25 February 2015, Salem was sentenced to life in prison in connection with a killing in 1995. At the time, there were still 25 charges pending against him, including charges of murder, extortion, and kidnapping. For some of these charges he has been convicted again in 2015 (murder of Pradeep Jain), 2017 (1993 Mumbai blast case) and 2018 (extortion). Salem is currently lodged in Mumbai's Arthur Road Jail.

Seeking for Portugal to rescind its extradition approval, in August 2015 Salem filed a motion with the Administrative Court of Portugal alleging that his life sentence was in violation of the condition that he would not face more than 25 years for any one crime. He also filed an appeal on the same basis in the Indian court system. These applications were denied.

Notably, shortly after Salem's extradition, India and Portugal signed an extradition treaty in 2007.

Pablo Escobar

Extradition requested by:
USA to Colombia

Countries involved:
Colombia | USA

Deceased on:
2 December 1993

Lawyers acting for the person sought:
Colombia: Guido Parro, Victoria Munoz, Juan David Castano, Raul Zapata, Santiago Uribe, Feisal Humberto Buitrago, Frank Lino Diaz

Charges

Murder, assassination, drug smuggling (1980 onwards).

Facts of the case

Pablo Escobar was a founder and leader of the infamous Medellín Cartel that operated out of Colombia during the 1970s and 1980s. At its peak, his drug cartel reportedly controlled approximately 80% of the global cocaine smuggling market. By 1987, Forbes magazine listed Escobar as the 7th richest person in the world. Escobar employed the notorious policy of *plata o plomo* (literally 'silver or lead'), a colloquial expression meaning 'bribery or bullets'. During Escobar's reign, the Medellín cartel was responsible for killing thousands of people including police, politicians, judges, journalists, and private citizens. The cartel was responsible for bribing countless more individuals in the Colombian government and judiciary.

Fearing the possibility of extradition to the USA, Escobar allegedly supported a 1985 attack on the Bogotá Palace of Justice by a guerilla group, M-19. The group killed nearly 100 people, including 12 Supreme Court Justices who were researching **the possibility of extraditing** drug cartel members to the USA. Escobar was also implicated in the 1989 bombing of a Colombian jetliner and the 1989 assassination of a presidential candidate, Senator Galán.

Extradition proceedings & key legal arguments

While no formal extradition proceeding against Pablo Escobar was ever initiated in Columbia, his role is key in understanding the (convoluted) developments of extradition law in Colombia.

In 1979, the USA and Colombia entered into a bilateral treaty governing extradition. Following the signing of the treaty, the Escobar's Medellin cartel successfully mounted a propaganda campaign against its implementation. By 1983, the USA had made dozens of requests for extradition under the treaty, but Colombia's then President Belisario Betancur did not grant a single extradition order. By November 1986, the Medellin cartel successfully intimidated the Supreme Court of Justice of Colombia into invalidating the treaty by declaring it unconstitutional upon the basis that the **interim president rather than the official president, signed the treaty into effect**.

The treaty was briefly reinstated in December 1986 by Colombia's newly elected president. Nonetheless, in June 1987, the Supreme Court of Justice of Colombia once again declared the 1979 extradition treaty between Colombia and the USA to be invalid because the President approved the treaty without ratification by the **legislature.** It is believed that the narco-terrorist activities of the Medellín Cartel helped to dissuade public opinion **against extraditions** to the USA Escobar was indicted in the USA on multiple counts of murder and drug trafficking by 1988, and extradition requests were sent for him and several members of his cartel.

Following the assassination of Senator Galán in 1989, the Colombian government took a harder stance on **extraditing members** of the drug cartels. Therefore, in August 1989, President Barco announced that drug traffickers wanted in the USA would be summarily **extradited**. The Supreme Court of Justice of Colombia later upheld this decree when it was challenged.

In the early 1990s, however, following the election of President Gaviria, the Colombian government entered into discussions with Escobar about the possibility of **partial amnesty**. In exchange for Escobar's surrender to national authorities, the government agreed not to **extradite** him to the USA and agreed to jail him in a prison that Escobar himself designed. However, Escobar did not **surrender** himself for several months - and still fearful of the **possibility of extradition** to the USA - Escobar was quoted as saying, 'better a grave in Colombia than a prison cell in the United States'.

In 1991, a new constitution was drafted and ratified. As part of this new constitution, the **extradition** of Colombian citizens would be **prohibited**. Instead, Colombians who are charged with committing crimes in another country that are also punishable by Colombian law would be prosecuted and judged in Colombia. The addition of this provision was widely believed to have been influenced by the activities of Escobar and other drug traffickers. Escobar surrendered to Colombian authorities shortly after a vote approving the **ban on extradition**.

Outcome

After his **surrender**, Escobar was placed in *La Catedral*, a prison built in his hometown of Medellín that he himself designed. The prison featured several luxurious amenities including a football field, a bar, a discotheque, a

Jacuzzi, and a waterfall. Escobar was even able to handpick his prison guards. At the time of his surrender, Escobar faced a maximum sentence of 30 years in Colombia. On 23 July 1992, after over a year in prison, Escobar escaped *La Catedral*. It was reported that the Colombian government was preparing to transfer him to a higher security prison after it became apparent that Escobar was still operating his global drug cartel from the safety of his self-designed prison. Escobar was killed in a shootout with Colombian police on 2 December 1993. There are conflicting stories as to whether he took his own life or was in fact killed by police officers.

Domenico Rancadore (aka Marc Skinner)

Extradition requested by:
Italy to the UK

Countries involved:
Italy | UK

Released on:
31 March 2015

Lawyers acting for the person sought:
UK: Euan Macmillan, Karen Todner

Charges

Mafia association, murder, extortion, racketeering, drug trafficking (1994)

Facts of the case

Domenico Rancadore was involved in the Sicilian Mafia during the 1980s, and was eventually charged with various mafia-related crimes. After a three-year trial in Italy, Rancadore was acquitted of such crimes in 1993. One year later he and his family moved to a town in western London (UK). Later that same year, new charges of being associated with the Mafia were brought against him and he was placed back on Italy's most wanted list. In 1999, an Italian court convicted Rancadore, ***in absentia***, and sentenced him to seven years in prison. A **European Arrest Warrant** was issued and Rancadore was arrested in the UK on August 7, 2013.

Extradition proceedings & key legal arguments

Rancadore's extradition proceedings began in November 2013. During the proceedings, he was initially granted bail. However, his bail was later revoked after a successful appeal by the prosecutors, who argued that Rancadore posed a flight risk should bail be granted. On November 27, he suffered a heart attack while in jail. After his recovery, Rancadore was returned to jail and his case continued. Rancadore and his lawyers argued that his extradition to Italy would violate his human rights, basing their claim on the fact that **Italian prisons** were at the time suffering from **overcrowding** according to a pilot judgment of the European Court of Human Rights. His lawyers argued that this prison overcrowding would subject Rancadore to **inhuman or degrading treatment**, and that these prison conditions could potentially worsen his heart condition. On March 17, 2014, a UK judge rejected Rancadore's extradition. Although the judge

found the EAW to be valid, he was unconvinced by **assurances** from Italy that prison conditions would not violate Rancadore's human rights. Therefore, he was discharged on a £20,000 bail, with conditions to report to his local police station daily, wear an electronic tag, and strictly obey a curfew. The UK prosecution attempted to appeal this decision, but paperwork was filed too late, thus precluding an appeal.

Only a few weeks later (on 4 April 2014), Rancadore was re-arrested in the UK based on a new European Arrest Warrant that Italian authorities issued and it was based on the same charges as Rancadore's previous extradition case. His lawyers argued this re-arrest was an **abuse of process**, but the new extradition case proceeded nonetheless.

Outcome

On February 20, 2015, Judge Howard Riddle at Westminster Magistrates' Court approved Rancadore's extradition. This time the judge was satisfied that Rancadore's human rights would not be violated upon extradition to Italy due to significant efforts in Italy to reduce prison overcrowding.

However, Italian authorities failed to inform their UK counterparts that Rancadore's case had technically **expired** in October of 2014. Under Italian law, once a time period of more than twice the length of the sentence has transpired, the sentence is considered to be expired and the serving of sentence is time-barred. Therefore, on 31 March 2015, an Italian Court of Appeal formally ended Rancadore's case and withdrew the European Arrest Warrant. He was released and no longer faced extradition. Lawyers from both sides cited the appeals paperwork delay in March of 2014 as the key to Rancadore avoiding extradition. Without this delay, it is possible that Rancadore's extradition would have been granted on appeal before the expiration of his sentence in October 2014.

Violent Crimes

Mustafa Kamel Mustafa (aka Abu-Hamza)

Extradition requested by:
USA to the UK

Countries involved:
USA | UK

Extradited on:
5 October 2012

Lawyers acting for the person sought:
UK: Muddassar Arani
USA: Joshua Dratel, Jeremy Schneider, Sabrina Shroff
ECtHR: Gareth Pierce, Ben Cooper

Charges

Hostage-taking (Yemen in 1998), providing material support to terrorists, providing material support to a foreign terrorist organization (created a terrorist training camp in Oregon to support Al Qaeda) and providing goods and services to the Taliban (Afghanistan in 2000-2001).

Facts of the case

Mustafa Kamel Mustafa, popularly known as Abu-Hamza, is a radical Muslim cleric who was a leading figure in the Islamist scene in the UK during the 1990s. While serving as Imam at the Finsbury Park Mosque in London (UK), Abu-Hamza preached an incendiary Islamist agenda and inspired militants throughout the continent. On 27 May 2004, Abu-Hamza was arrested in the UK on an extradition warrant from the USA. His charges included conspiring to take Western hostages in Yemen, funding terrorism, and organizing a terrorist training camp in Oregon between 1998 and 2000. By October of that year, authorities in the UK charged him with an additional 15 offenses and the extradition process initiated by the USA was temporarily stayed in accordance with Article 88 of the *UK Extradition Act of 2003*, which states that the judge must suspend the extradition hearing while a domestic case is being adjudicated. Ultimately, he was found guilty of 11 of the 15 charges in the UK and was imprisoned for seven years. In response, his counsel filed a Court of Appeal action, which was dismissed in November of 2006. The extradition proceeding to the United States started again in 2007.

Extradition proceedings & key legal arguments

On 17 November 2007, a UK Senior District Judge ruled in favour of Abu-Hamza's extradition and sent the case to the UK Home Secretary for a final decision. By February of the subsequent year, his extradition order was signed. In his appeal to the High Court, Abu-Hamza invoked the UK jurisdiction on his case, the passage of time bar to extradition and the risk of human rights violation. On 20 June 2008, the High Court dismissed the appeal and, on the specific human rights claim, held that solitary confinement did not in itself constitute inhuman or degrading treatment contrary to Article 3 of the European Convention on Human Rights, which is incorporated in the UK by virtue of the *Human Rights Act 1998*.

On 20 June 2008, the High Court affirmed the Home Secretary's decision. On 14 May 2008 the High Court refused to certify a point of law of general public importance which ought to be considered by the House of Lords and also refused leave to appeal to the House of Lords – the then court of last resort of the United Kingdom.

Later in 2008, Abu-Hamza applied to the European Court of Human Rights, alleging that, if surrendered to the USA, he would be at real risk of ill-treatment either as a result of conditions of detention at ADX Florence – a federal prison based in Colorado which provides a higher level of custody than a maximum security prison (ADX Florence is classed as a supermax and is informally known as the Alcatraz of the Rockies). When the application was held admissible the Strasbourg Court urged (under Rule 39 of the Rules of Court) that it was desirable in the interests of the proper conduct of the proceedings that the applicants should not be extradited until further notice. Abu-Hamza's main argument against extradition was that the imprisonment conditions would amount to **inhumane or degrading treatment** and thus violate Art. 3 of the European Convention on Human Rights.

On April 10, 2012, the IV section of the Strasbourg Court passed a judgment that found no violation of Article 3 in case of surrender. Although the Court acknowledged that conditions at ADX Florence are highly restrictive, this does not mean that inmates are kept in complete sensory isolation or total social isolation. The Court noted, for example, that a great deal of in-cell stimulation is provided to inmates through television and radio channels, frequent newspapers, books, hobby and craft items and educational programming. In the Court's opinion, 'the range of activities and services provided goes beyond what is provided in many prisons in Europe' and these services are supplemented by regular telephone calls and social visits and by the ability of inmates, even those under special administrative measures, to correspond with their families.

The judgment of the European Court of Human Rights became final on 24 September 2012.

Outcome

After an eight-year legal battle, Abu-Hamza was finally extradited to the USA on 5 October 2012. By May of 2014, he was found guilty of each of the 11 charges he faced and was sentenced to life in prison without the possibility of parole. Abu-Hamza is currently serving his sentence at the ADX Florence in Fremont County, Colorado.

Julian Assange

Extradition requested by:
Sweden to the UK | USA to the UK

Countries involved:
Sweden | UK | USA | Ecuador | Australia

EAW issued by Sweden on:
30 November 2010

Lawyers acting for the person sought:
Sweden: Thomas Olsson, Per E. Samuelson
UK: Jennifer Robinson, Dinah Rose, Mark Summers, Helen Law

Charges

Rape, sexual molestation and unlawful coercion (Sweden)

Conspiracy to illegally access a computer to obtain classified information and to obtain information from a Department of Agency in furtherance of a criminal act (USA)

Facts of the case

Julian Assange is an Australian computer programmer and founder of WikiLeaks, a website dedicated to leaking classified data. On 18 August 2010, Assange applied for a residence permit to live in work in Sweden. He aimed at creating a new base for WikiLeaks in this country, due to laws protecting whistleblowers. Soon after, on 20 August 2010, the Swedish Prosecution Office issued a warrant for Assange on allegations of rape and sexual abuse against two women. Shortly after, the Prosecution Office withdrew the arrest warrant for the rape charges, but investigations concerning the other counts of molestation remained pending. On October 18, 2010, Assange was denied residency in Sweden and he then moved to London (UK).

Extradition proceedings & key legal arguments

On 30 November 2010, the Swedish authorities issued a **European Arrest Warrant** for Assange on suspicion of rape, sexual molestation and unlawful coercion. At the request of the Swedish Prosecution Office, an Interpol Red Notice for Assange's arrest related to sex crime charges was issued on the same day.

On 7 December 2010, Assange **surrendered** himself to UK police and was kept in police custody until he was granted bail a few days later.

On 24 February 2011, at Belmarsh Magistrates' Court, District Judge Howard Riddle ruled that the EAW was valid and extradition would not breach Assange's rights. Therefore, the court ruled that he should be extradited to Sweden. However, Assange's lawyers filed an appeal at the High Court against extradition on March 3. In November 2011, the High Court upheld the previous ruling of the Magistrates' Court in favour of extradition but, a few days later, Assange was granted the right to petition before the UK Supreme Court. His appeal related to section 2(2) in Part 1 of the *Extradition Act 2003* which requires an EAW to be issued by a **judicial authority**. Assange contended that the Swedish Prosecutor (not being a 'judge') did not fall within the meaning of that phrase and that, accordingly, the EAW was invalid. This point of law was regarded as of general importance, for in the case of quite a number of Member States EAWs are issued by public prosecutors. In other words, Assange's lawyers argued that the Swedish-issued EAW was invalid because it was issued by a Swedish prosecutor that would allegedly not qualify as a 'judicial authority' within the meaning of the UK Extradition Act. The majority of the Supreme Court justices, however disregarded the argument that a 'judicial authority' must only be some kind of court or judge and subscribed to the idea that the phrase 'judicial authority', in the context of the Framework Decision, and other European instruments, bears a broad and autonomous meaning. On 30 May 2012, in a 5-2 decision, the UK Supreme Court held that the Swedish prosecutor was a judicial authority capable of issuing the warrant and denied the appeal of Assange.

A few days later, on June 18, 2012, Assange breached his bail conditions and took refuge in the embassy of Ecuador, in London (UK), seeking political asylum. On August 16, 2012, the Ecuadorian government granted him political asylum. Ecuador cited the possibility of Assange being **extradited** to the USA and facing the death penalty as **justification** for **granting asylum.** UK authorities refused negotiations to provide Assange with safe passage to Ecuador and he stayed in the embassy for over 6 years. In the meantime, the charges against Assange in Sweden were dropped due to Swedish statutes of limitations.

Current developments

On 11 April 2019, after growing tension between Assange, the Ecuadorian President Moreno and the embassy personnel, the asylum status of Assange was revoked. Assange was then dragged out from the embassy by UK police forces and arrested for **breaching bail conditions** in 2012, when he had failed to surrender to the court after the UK Supreme Court had ordered his surrender to Sweden. Assange was then sentenced to 50 weeks in prison on 1 May 2019.

Shortly after the withdrawal of his asylum status and arrest, an extradition request for Assange was issued by the USA pursuant to the **2003 USA-UK extradition treaty**. The request was based initially upon a federal grand jury indictment that, in Virginia, had charged Assange with conspiracy to commit computer intrusions and obtaining classified information. In a later 18-count

superseding indictment, the Department of Justice of the USA alleged that Assange was complicit with Chelsea Manning, a former intelligence analyst in the U.S. Army, in unlawfully obtaining and disclosing classified documents related to the national defense. According to the official statement of the Department of Justice, if convicted, Assange faces a maximum penalty of 10 years in prison on each count except for conspiracy to commit computer intrusion, for which he faces a maximum penalty of five years in prison. Assange did not consent to surrender and expressed his intention to once again fight extradition before the domestic courts of the UK. Judge Emma Arbuthnot of Westminster Magistrates' Court set a full extradition hearing in the Assange case for 25 February 2020.

Hayle Abdi Badre

Extradition requested by:
Italy to the UK

Countries involved:
Italy | UK

EAW issued on:
22 May 2013

Lawyers acting for the person sought:
UK: Mark Summers

Charges

Unauthorized financial activity (2013)

Facts of the case

Hayle Abdi Badre is a Somalian national who operated a 'payment services' company called Sahal Express Limited, headquartered in London (UK) but also operating in Italy. Badre's company used the remittance system known as *hawala,* developed largely by those of the Muslim faith, in pursuit of the tradition forbidding the receipt of interest on money. *Hawala* facilitates the transfer of money from an individual in one country to an individual in another country without using formal banking institutions, without an actual transfer of funds and sometimes without written records of the transactions.

On 22 May 2013, the Court of Florence (Italy) issued a **European Arrest Warrant**, charging Badre with unauthorised financial activity. At the relevant time, his company was not entitled to operate in Italy, as a financial intermediary, as it lacked the required authorization from the competent national monetary and financial authorities. Under the EU Directive on Payment Services 2007/64/EC, member states required payment service businesses to obtain authorization from a national authority in order to render these services. However, the said Directive gave member states the option to implement a waiver 'registration' system to avoid the more complex 'authorisation' process for smaller companies (totaling transactions of less than €3 million per month on average). The UK adopted the waiver provision of the EU Directive, whereas Italy did not.

Extradition proceedings & key legal arguments

Badre's extradition hearing in first instance began in late 2013 in the Westminster Magistrates' Court. His main arguments related to the fact that

the EAW failed to supply certain required information, that his charge was not an extraditable offense because it lacked **dual criminality** between the two countries and that his extradition to Italy would violate his rights under Art. 3 of the European Convention on Human Rights due to the overcrowding of Italian prisons. With a ruling issued in December 2013 the court ordered Badre's extradition to Italy. Soon thereafter, Badre lodged an appeal with the High Court of Justice. On 11 March 2014, a panel of two justices of the High Court allowed Badre's appeal, thus rejecting his extradition to Italy. The court did not agree with the argument that the European Arrest Warrant lacked certain required information (specific amounts of monetary transactions, for instance). Rather, it granted the appeal on two grounds. First, the High Court agreed that the offense lacked **dual criminality** because the UK permitted the less stringent 'registration' process in lieu of the more rigorous authorization process, under the terms of Under the EU Directive on Payment Services 2007/64/EC. Thus, the charge of unauthorized financial activity would not have constituted a crime in the UK. Second, the High Court agreed that the systemic problem of overcrowding in Italian prisons (as ascertained by the 2013 pilot judgment *Torreggiani v. Italy* of the European Court of Human Rights) had 'rebutted the presumption of compliance with the Convention which would normally arise in the case of a member state of the Council of Europe and of the European Union'. This state of affairs, therefore, raised 'substantial grounds for believing that there was a 'real risk of treatment contrary to Article 3' The assurance sent by the Italian authorities (mentioned in Part A of this book, §8) was regarded as insufficient to dispel that belief. The High Court noted, for example, that Italy failed to specify that the person sought would be kept in a particular prison (or in one of a number of identified prisons) which did not suffer from the systemic problem identified by the European Court of Human Rights.

Outcome

The prosecutor in the case sought an adjournment, to enable further instructions to be taken from Italy in terms of a more specific assurance than that already given. The application for adjournment was however denied and the extradition case against Badre ended with a rejection of the surrender request.

Cesare Battisti

Extradition requested by:
Italy to France | Italy to Brazil

Countries involved:
Italy | France | Brazil | Bolivia

Expelled from Bolivia on:
14 January 2019

Lawyers acting for the person sought:
France: Éric Turcon
Brazil: Luiz Eduardo Greenhalgh, Pierpaolo Cruz Bottini, Igor Sant'Anna Tamasauskas
Italy: Davide Steccanella

Charges:

4 counts of murder (1978, 1979).

Facts of the case

Cesare Battisti is an Italian former leftist terrorist for the Italian armed group *Armed Proletarians for Communism*. In 1979 he was arrested in Milan and sentenced to 12 years in a murder case but later escaped from a Frosinone prison and fled the country. Battisti was also tried ***in absentia*** and found guilty in two separate Italian criminal trials for the 1978 and 1979 murders of four individuals: Antonio Santoro, a prison guard, Andrea Campagna, a police officer, Lino Sabadin, a butcher, and Pierluigi Torregiani, a jeweler. These judgments became final in 1991 and 1993 and Battisti was sentenced to two terms of life in prison.

Extradition proceedings & key legal arguments

After the 1979 prison escape, Battisti fled first to France, then to Mexico, and then again to France where he became a writer and translator. In France, Battisti found protection under the so called 'Mitterrand doctrine', the policy described in the extradition case of Paolo Persichetti (reported in Part B of this book). In 1990, Battisti spent five months in Fresnes prison (France) on **provisional arrest** connected to an extradition request from Italy relating to the 1979 judgment: this request was eventually rejected by the Paris Appeal Court on 29 May 1990.

In 2002, another extradition request was submitted to France by Italy and the Paris Court of Appeal approved it on 20 June 2004, in the context of the country's reversal of the Mitterand doctrine. Battisti, however, was allowed to await

the outcome of the extradition proceeding under bail conditions. He eventually failed to report at a police station and went again into hiding in August 2004.

Battisti moved to Brazil in October 2004 and was later once again arrested in Rio de Janeiro. Italy submitted another extradition request, this time to Brazil.

The extradition case against Battisti in Brazil was highly controversial and revolved around the legitimacy of the 2009 granting of **political refugee status** to Battisti by Minister of Justice Tarso Genro. Under Brazilian law, the refugee status was a bar against surrender.

In 2009, the Supreme Court of Brazil ruled (in a 5-4 decision) that the decision to grant Battisti asylum was illegal but also that the ultimate authority to order surrender was in the hands of the Brazilian President. President Luiz Inacio Lula da Silva granted Battisti permanent asylum with a decree issued on 31 December 2010, only a few hours before the end of his time in office. Lula qualified his refusal as 'a matter of **national sovereignty**'. In 2011, Battisti was again released from prison after having spent a two-year sentence for use of false identity documents in Brazil. Lula's decree was also upheld by the Brazilian Supreme court in 2011.

As Italy insisted in requesting extradition, subsequent proceedings focused on whether Lula's decree could be nullified by his successors. In December 2018, a Brazilian Supreme Court judge ordered the arrest of Battisti on grounds of risk of flight and asserted the right of successor Presidents to revoke the decrees of past Presidents. Immediately thereafter, Brazilian President Michael Temer signed the extradition order but Battisti – once again - was nowhere to be found in the country.

Outcome

It emerged a few days later that Battisti had fled to Bolivia, where he was arrested in Santa Cruz de la Sierra on January 2019 by Bolivian police forces. Bolivia denied him asylum and Battisti was immediately expelled to Italy – a procedure that bypassed the extradition order by Brazil. On 14 January 2019 Battisti was transferred by an Italian military plane to Ciampino airport (Rome) and is currently serving a life sentence in the prison of Oristano, in the island of Sardinia.

Glen Sebastian Burns

(also with Atif Ahmad Rafay)

Extradition requested by:
USA to Canada

Countries involved:
Canada | USA

Convicted for murder on:
26 May 2004

Lawyers acting for the person sought:
Canada: Edward L Greenspan
USA: Theresa Olson, Song Richardson

Charges

Three counts of aggravated first-degree murder

Facts of the case

In July 1994, Burns and his high school friend Rafay were accused of brutally murdering three members of the Rafay family. The murders happened in the state of Washington, and both suspects quickly fled to British Columbia, Canada. The two were 18 years old at the time. In Canada, Burns and Rafay confessed to undercover agents of the Royal Canadian Mounted Police (RCMP). The RCMP used the so called 'Mr. Big tactic' to extract the confessions, a practice that was illegal in the USA, but legal at the time in Canada. The 'Mr. Big tactic' is a controversial investigative tool in which undercover officers create the appearance of a criminal organization looking to recruit or do business with a suspect. Over the course of the operation officers elicit information about past crimes, often as proof of criminal veracity or in order to help eliminate evidence of that crime. The two were arrested in Vancouver in August 1995, the same month that the family estate, valued at about $300,000, was turned over to Rafay. The USA requested extradition of Burns and Rafay immediately thereafter.

Extradition proceedings & key legal arguments

The extradition proceeding in Canada took six years (including two years and two re-hearings at the Supreme Court of Canada) and led to a major change in the Canadian law on extradition for persons sought facing the **death penalty**.

Extradition was requested on the basis of a 1971 **bilateral treaty** under which the Canadian Minister of Justice was entitled to seek **assurances** that the persons sought would not be subject to the death penalty after surrender (*Article 6, Extradition treaty Canada-USA*). However, the Minister of Justice did not seek assurances in this case and ordered their extradition pursuant to s. 25 of the Canadian *Extradition Act*.

Burns (and Rafay) raised a number of legal issues against this decision, mainly based on the Canadian Charter of Rights and Freedoms. In 1997, the British Columbia Court of Appeal, in a majority decision, ruled that the unconditional extradition order would violate the mobility rights of the respondents under the *Charter* (section 6).

The substance of the holding was eventually upheld by the Supreme Court of Canada, according to which while domestic extradition rules created a **broad ministerial discretion whether to surrender a fugitive** (and if so, on what terms), the Minister's discretion was limited by the Charter.

The Supreme Court, however, disagreed with the Court of Appeal's view that the concept of mobility rights (i.e. the right to remain in Canada) could be stretched to cover the death penalty controversy. Instead, the Supreme Court reviewed the case under section 7 of the Charter because the extradition order would, if implemented, deprive the respondents of their rights of liberty and security of the person since their lives were potentially at risk.

The Supreme Court also cited concerns about the **death row phenomenon** and 'potential wrongful convictions' since the 'recent and continuing disclosures of wrongful convictions for murder in Canada and the United States provide tragic testimony to the fallibility of the legal system, despite its elaborate safeguards for the protection of the innocent'.

The conclusion was that a Canadian Minister is constitutionally bound to ask for and obtain an assurance that the death penalty will not be imposed as a condition of extradition.

Following the request and granting of the said assurance, Burns (and co-defendant Rafay) were eventually extradited to the USA in March 2001.

Outcome

In May 2004, Burns and Rafay were tried for the triple murder by the King County Superior Court in Washington State. Superior Court Judge Charles Mertel allowed the use in evidence of the videotaped confession obtained through the 'Mr Big tactic', on the grounds that if the methods were legal in Canada they were then admissible under international law (notwithstanding the fact that they would have been illegal in the USA). They were eventually found guilty and sentenced to 99 years in prison. In 2013, the U.S. Supreme Court rejected their request to reopen the case.

Sabrina De Sousa

Extradition requested by:
Italy to Portugal

Countries involved:
USA | Portugal | Italy

Extradition approved by Portugal on:
8 June 2016

Lawyers acting for the person sought:
Portugal: Manuel Magalhães e Silva
Italy: Dario Bolognesi
USA: Abbe Lowell

Charges

Aggravated kidnapping (2003)

Facts of the case

Sabrina De Sousa, dual citizen of USA and Portugal, is a former CIA operative charged with assisting in the 2003 **extraordinary rendition** of Abu Omar (which is reported later in this Part of the book). In July of 2006, an Italian judge issued a warrant for the arrest of De Sousa and other 22 U.S. nationals. The U.S. State Department then banned international travel for all agents implicated in the rendition and De Sousa was advised to remain in the USA. By February 16, 2007, De Sousa was formally indicted by the Milan court.

De Sousa's criminal trial in Milan (Italy) began without her appearance on 8 June 2007. Throughout the criminal proceedings *in absentia*, she denied her involvement in the **rendition** of Abu Omar and maintained that she had been falsely implicated. In February 2009, seven months before the case was decided, she resigned from the CIA.

In May 2009, De Sousa filed a lawsuit in a federal court in Washington D.C. against the U.S. State Department for its failure to grant her **diplomatic immunity** as they had done with other American nationals implicated in the Abu Omar affair. Based on Articles 31 and 39 of the **Vienna Convention on Diplomatic Relations**, De Sousa argued that since she was classified as a Foreign Service Officer of the State Department, she was indeed eligible for **diplomatic immunity.** Her application was however dismissed on the grounds that diplomatic immunity was meant to protect the government, not individuals. The federal

court also ruled that the Vienna Convention negates the guarantee of **diplomatic immunity** for serious crimes punished with more than five-year sentence.

On 4 November 2009, De Sousa was convicted (along with 22 other CIA operatives) *in absentia* by the Milan Court for her role in the extraordinary rendition of Abu Omar. She was sentenced to seven years in prison, which was later reduced to four years on appeal. Concurrently, the Milan court ruled that three of the charged CIA officials were entitled to **diplomatic immunity**. This was the first and only trial and conviction of U.S. intelligence officers in connection with the CIA's rendition program.

Extradition proceedings & key legal arguments

On 5 October 2015, De Sousa was arrested at the Lisbon Airport in Portugal while traveling from the USA to visit her mother in India. Her arrest was based on the **European Arrest Warrant** that was issued by Italian judicial authorities following her 2009 criminal conviction. Both of her passports were confiscated and she was detained overnight. The next day she was released and agreed to remain in Portugal pending the extradition proceedings.

On 15 January 2016, a Portuguese court ruled that De Sousa should be extradited and shortly thereafter she filed an appeal with the Portuguese Supreme Court. In April 2016, the Portuguese Supreme Court rejected Ms. De Sousa's appeal and upheld her extradition. Her counsel immediately lodged an appeal with the Constitutional Court of Portugal. The appeal was founded on the notion that Italian law did not offer a reliable **guarantee of a retrial** despite the fact that the original trial was held *in absentia*. This allegedly conflicted with Portuguese law, which guarantees to the person sought an automatic right to a retrial in similar cases. On 8 June 2016, the Portuguese Constitutional Court rejected the appeal and ordered the surrender of De Sousa.

In anticipation of imminent extradition to Italy, the Italian President of the Republic released a statement in February 2017 granting De Sousa a partial commutation of sentence, under the special 'pardon' authority granted by Article 87 of the Italian Constitution. Earlier pardons had been granted in 2015 to Robert Seldon Lady and Betnie Medero, two CIA operatives involved in the Abu Omar case and later convicted in Milan. In the De Sousa case, the commutation essentially reduced the outstanding sentence to be served from four to three years, thus making the person sought eligible to apply for measures alternative to imprisonment. Following the statement from the Italian President of the Republic, Italian prosecutors to immediately withdraw the European arrest warrant against De Sousa. This pattern of pardons led to widespread speculation that Italy was succumbing to diplomatic pressure from the USA to draw a line under the Abu Omar affair.

Outcome

After briefly returning to the USA, De Sousa traveled back to Italy to serve the terms of her sentence. On 6 November 2017, a supervisory penal court (*Tribunale di Sorveglianza*) in Milan authorized De Sousa to complete three-years of community service. She is currently assigned to the NGO San Michele Arcangelo Onlus in the Lazio region and is reported to teach English as a foreign language to unprivileged minors.

Paolo Persichetti

Extradition requested by:
Italy to France

Countries involved:
Italy | France

Extradited to Italy on
25 August 2002

Lawyers acting for the person sought:
France: Irène Terrel, Jean-Jacques de Felice
taly: Francesco Romeo

Charges

Accessory to murder, participation to an unlawful armed group (1987).

Facts of the case

Paolo Persichetti is an Italian journalist and book writer, former militant of the left-wing armed group *Brigate Rosse-Unione dei Comunisti Combattenti*. In 1990, Persichetti was sentenced to 22-year imprisonment by an Italian Court of Appeal on counts of participation to an unlawful armed group and 'moral' participation in the 1987 murder of senior Air Force general Licio Giorgieri. This murder occurred in the context of the *Anni di Piombo* (literally 'Years of Lead) - a period of social and political turmoil that lasted from the late 1960s until the late 1980s and was marked by a wave of incidents of political terrorism and murders in Italy. The judgment against Persichetti became final in 1991 when it was upheld by the Italian Supreme Court. Persichetti had been kept in detention pending the criminal proceedings in Italy but had been released when the first-instance decision in his case acquitted him. He then moved to France in 1991, before the appellate proceeding ended in a conviction.

Extradition proceedings & key legal arguments

In 1985, the French President François Mitterand took a major political commitment against the surrender of foreign 'political' activists who were sought by countries whose legal systems were regarded as 'incompatible' with the French idea of rights and freedoms. The policy was especially relevant for Italy, as anti-terrorist laws passed in Italy during the 1970s and 1980s had significantly impacted on the rights and freedoms of citizens. Among the questionable new features of Italian law, in Mitterand's views, there was the evidence

of defectors (In Italian, *pentiti)* - individuals who were charged with serious crimes and allowed to become prosecution witnesses in exchange for protection and possibly reduced sentences. Paolo Persichetti's conviction in Italy was mainly based on the evidence of a defector.

The so called *Mitterand doctrine* essentially consisted in an 'oral promise' to grant asylum and deny extradition to members of the Red Brigades and other similar organisations across Europe, provided that members renounced their past, did not go into hiding, stayed out of politics and had not been not directly implicated in blood crimes. Over the years, however, the promise of Mitterand came under increasing scrutiny in France and started to be openly criticized by his detractors and political opponents.

Once the conviction against Persichetti became final, **Italy requested extradition**. From 1993 to 1995, he was detained in a French prison pending the outcome of extradition proceeding. At the time, Persichetti's case was at the heart of French political debate, given that for the first time in the V Republic there was a 'cohabitation' with a left wing President (Francois Mitterand) and a right wing Prime Minister (Édouard Balladur). It was Balladur who signed the extradition order against Persichetti, although this order was not executed at the time and essentially ignored also in the first years of the Presidency of Jacques Chirac. In the meantime, Persichetti was released from prison in January 1995 and was allowed to pursue his university studies in political science in Paris. He started teaching at the Université Paris-St-Denis in 2001, the same university from which he had obtained his doctoral degree a few years earlier.

In 2002, the Italian Government insisted to execute the 'sleeping' extradition order after the murder of Government consultant Marco Biagi (by a group that described itself as the 'new' Red Brigades) had sparked a new wave of anti-French sentiment across Italy.

On 25 August 2002, Persichetti was suddenly arrested and surrendered in the middle of the night to the Italian police under the Mont Blanc tunnel. The surrender of Paolo Persichetti to Italy was approved by then French Prime minister Jeanne-Pierre Raffarin and marked the formal end of the *Mitterand doctrine*.

Outcome

Overall, Persichetti served 15 years of his original 22-year sentence and his conviction was regarded as finally spent on 22 March 2014.

Roman Polanski

Extradition requested by:
USA to France, Switzerland and Poland

Countries involved:
USA | France | Switzerland | Poland

Extradition from Poland rejected on:
30 October 2015

Lawyers acting for the person sought:
Switzerland: Lorenz Erni, Jerzy Stachowicz
Poland: Jan Olszewski
USA: Harland W. Braun

Charges

Furnishing a controlled substance to a minor, lewd or lascivious acts upon a minor, unlawful sexual intercourse, rape by use of drugs and perversion and sodomy on a person (1977).

Facts of the case

Roman Polanski was indicted in Los Angeles (USA) on 24 March 1977 and faced five felony counts relating to the sexual assault of 13-year old Samantha Geimer that allegedly took place earlier in 1977. At the arraignment, Polanski initially pleaded not guilty to all counts but later accepted a plea deal whose terms included dismissal of the early charges in exchange for a plea of guilt to the lesser charge of engaging in unlawful sexual intercourse with a minor. He served 42 days in prison and attended a mandatory psychiatric evaluation. Believing the sentencing judge might overrule the deal and impose a longer prison sentence, he fled to London (UK) and then to France on February 1, 1978. A bench warrant was issued by the court for the defendant's arrest that same day.

Extradition proceedings & key legal arguments

Polanski holds dual citizenship (Polish and French). In 1978, the USA requested Polanski's **extradition** from France. Article 5 of the **bilateral extradition treaty** (signed in 1909 and ratified in 1911) that was in force between France and the USA at the time gave France the option to reject extradition of its own nationals. In 1996, a new bilateral treaty was signed (see Appendix of this book) and, once again, under its Article 3 **neither party is obligated to surrender their**

own nationals in response to an extradition request. Polanski's extradition was rejected later in 2002.

On 26 September 2009, Polanski was arrested by the Swiss police while he was visiting Zurich for a film festival. The Swiss police acted on a provisional **arrest warrant** issued by the USA, in accordance with Art. 16 of the European Convention on Extradition. The said provision allows arrests based on direct requests between countries, diplomatic channels, or by way of Interpol notices circulated throughout the international community. The USA issued a formal request for Polanski's extradition from Switzerland on 23 October 2009. In November 2009, Polanski was released under strict conditions (including a bail of $4.5 million and electronic tagging) and spent almost a year under house arrest in his Swiss chalet, awaiting for Switzerland's decision on **extradition.** On July 12, 2010, the Swiss authorities announced that they would not extradite Polanski to the USA after they had requested, without success, access to the testimony of Roger Gunson, a retired lawyer who originally prosecuted the case in the USA. The Gunson testimony was allegedly crucial to establish whether the judge had assured Polanski that time he spent in a psychiatric unit would constitute the whole of his period of imprisonment.

In January 2015, another extradition request was submitted by the USA to Poland, although Polanski was never arrested in Poland in connection with such request. However, on 25 February 2015, Polanski appeared before a Polish court for the extradition hearing. His lawyer argued against **extradition** on the ground that surrender would violate *ne bis in idem* and that the offences were time-barred under Polish law. Similar to the **extradition treaty** between France and the USA, Article 4 of the treaty governing extradition between Poland and the USA allows Poland to refuse **the extradition** of nationals. On October 30, 2015, Judge Dariusz Mazur of the Krakow district court denied the **extradition request** on two grounds. First, the Krakow court accepted Polanski's claims that surrender could expose him to a concrete risk of trial unfairness. Second, the Krakow court also agreed that his **extradition** was precluded under the *ne bis in idem* principle as he had already admitted guilt and served a prison sentence for the offense. The judge held that turning over the person sought would constitute an 'obviously unlawful' deprivation of liberty because the State of California, where Polanski was convicted, was unlikely to conduct a fair trial and provide humane conditions of confinement for the director, who was 82 at the time.

On May 31, 2016, Justice Minister of Poland Zbigniew Ziobro appealed the October 2015 ruling before the Polish Supreme Court. In December 2016, a panel of three Supreme Court judges dismissed the appeal as 'groundless'.

Current developments

Polanski remains subject to an arrest warrant in the USA and currently resides in Paris (France), making occasional visits to Poland.

Jens Soering

Extradition requested by:
USA to UK

Countries involved:
USA | UK | Germany

Extradited to the USA on:
12 January 1990

Lawyers acting for the person sought:
USA: Steven Rosenfield
ECtHR: Colin Nicholls, QC

Charges

Two counts of first-degree murder (1985)

Facts of the case

Jens Soering is a German national charged with murdering the parents of his girlfriend in the Commonwealth of Virginia when he was 18. Death in each case was the result of multiple and massive stab and slash wounds to the neck, throat and body of the two victims (William Reginald Haysom, aged 72 and Nancy Astor Haysom, aged 53). Soering was arrested with his girlfriend in England in 1986 in connection with a cheque fraud.

Extradition proceedings & key legal arguments

On 13 June 1986 a Grand jury of the Circuit Court of Bedford County indicted Soering on charges of murdering the Haysom parents. The charges alleged capital murder of both of them. In August 1986, the USA requested extradition under the terms of the 1972 Extradition bilateral treaty in force at the time. In 1987, Germany also requested extradition to the UK, claiming jurisdiction on the case. This request from Germany was however denied as the evidence submitted was regarded by the UK Director of Public Prosecutions as insufficient to mount a prima facie case against the person sought.

In the extradition proceeding relating to the request from the USA, an **assurance** was sought on the question of the **death penalty** and on 1 June 1987 the Attorney for Bedford County stated that: 'I hereby certify that should Jens Soering be convicted of the offence of capital murder as charged in Bedford County, Virginia ... a representation will be made in the name of the United

Kingdom to the judge at the time of sentencing that it is the wish of the UK that the death penalty should not be imposed or carried out'

In June 1987 a judge at Bow Street Magistrates' Court acknowledged that there was a **prima facie** case against Soering and approved extradition and the decision was later upheld on appeal by the Divisional Court. On 30 June 1988 the House of Lords rejected the applicant's petition for leave to appeal against the decision of the Divisional Court and shortly thereafter the Secretary of State ordered surrender to the USA.

However, transfer did not take place pending interim measures connected with Soering's application to the Strasbourg Court. In 1998, Soering filed an application to the European Court of Human Rights stating that, notwithstanding the assurance given to the UK, there was a serious likelihood that he would be sentenced to death if extradited to the USA. Germany was also a party to that case. Soering maintained that in the circumstances and, in particular, having regard to the 'death row phenomenon' he would be subjected to inhuman and degrading treatment and punishment contrary to Article 3 of the European Convention. He cited in particular a) the delays in the appeal and review procedures following a death sentence, during which time he would be subject to increasing tension and psychological trauma; b) the fact that (in his view) the judge or jury in determining sentence is not obliged to take into account the defendant's age and mental state at the time of the offence; c) the extreme conditions of his future detention on 'death row'; c) and the constant spectre of the execution itself, including the ritual of execution. He also relied on the possibility of extradition, which he would not oppose, to Germany accentuating the disproportionality of surrender to the USA.

In a judgment dated 7 July 1989, the Strasbourg Court stated that, although the democratic character of the Virginia legal system was 'beyond doubt', having regard to the very long period of time spent on **death row** in such extreme conditions, 'with the ever present and mounting anguish of awaiting execution of the death penalty', and to the personal circumstances of Soering (especially his age and mental state), extradition would expose him to a real risk of violation of Article 3. After this decision, the UK obtained **further assurances** that authorities in Bedford County agreed not to pursue the death penalty and Soering was extradited to the USA on 12 January 1990. In the USA, Soering was then tried and convicted of the first degree murders of the Haysoms and, on 4 September 1990, sentenced to two consecutive life terms.

Current developments

Soering is currently serving his sentence at the Buckingham Correctional Center in Dillwyn, Virginia. While in prison, he converted from Buddhism to Roman Catholicism and published several books and articles. Soering has been eligible for parole since 2003 but his fourteenth parole request was denied at the beginning of 2019. He always maintained his innocence.

Nizar Trabelsi

Extradition requested by:
USA to Belgium

Countries involved:
Belgium | USA | Tunisia

Extradited on:
3 October 2013

Lawyers acting for the person sought:
Belgium: Alexandre Château
ECtHR: Marc Nève

Charges

Conspiracy to kill U.S. nationals outside of the USA, conspiracy and attempt to use of weapons of mass destruction, conspiracy to provide support and resources to a foreign terrorist organisation (2000 onwards).

Facts of the case

In 2001, Trabelsi – a Tunisian national - was arrested in Belgium after a search warrant had led to the discovery of false passports, automatic weapons and ammunition, as well as chemical formulae that could be used for making explosives. Trabelsi was later sentenced to ten years' imprisonment by the Brussels Regional Court for attempting to blow up the Kleine-Brogel Belgian army base, forgery, and instigating a criminal conspiracy to attack persons and property. The 2003 court's judgment stated that he attempted to 'commit one of the most serious crimes since Belgian independence'.

Extradition proceedings & key legal arguments

In 2008, the USA requested the extradition of Trabelsi for the purpose of prosecuting him on charges of Al-Qaeda-inspired acts of terrorism. The request was based on the terms of the 1987 bilateral treaty governing extradition between Belgium and the USA. At the time, Trabelsi was still serving his 2003 Belgian sentence.

The extradition proceeding in Belgium began before the *chambre du conseil* of the Nivelles Regional Court that approved the **provisional arrest order** against Trabelsi also in light of an early **assurance** given by the U.S. Government that 'upon extradition, Trabelsi will not be detained or incarcerated in any facility other than a civilian facility in the United States' (thus excluding the possibility

of detention in the Guantanamo Bay detention camp). On 10 June 2010, the Brussels Court of Appeal issued a favourable opinion on the applicant's extradition, on condition that: a) the death penalty is not imposed on Trabelsi; b) any life sentence is accompanied by the prospect of a possible release, even if the conviction is based on terrorist acts; c) in the event of a request for re-extradition to a third country, such as Tunisia, the USA must request the agreement of Belgium.

On 10 August 2010, the U.S. authorities confirmed that the applicant was not liable to the death penalty and assured the Belgian authorities that he would not be extradited to any third country without the agreement of the Belgian Government. The U.S. authorities also reiterated that the maximum life prison sentence was not mandatory and that even if all the constituent elements of the criminal offences in question were secured and proved, the court had the discretion to impose a lighter sentence.

One year later, in 2011, the Belgian Minister of Justice adopted a ministerial decree granting the applicant's extradition to the USA. This decree would later be approved by the Belgian *Conseil d'Etat* in a final judgment dated 23 September 2013.

Against the 2011 ministerial decree that ordered surrender, Trabelsi also filed an application with the European Court of Human Rights for an **interim measure** pursuant to Rule 39 of the Rules of the Court. On 6 December 2011, the Strasbourg Court acceded to the request and notified the Belgian Government that it should not extradite Trabelsi to the U.S. for the duration of the proceeding in Strasbourg. On 3 October 2013, Belgium nevertheless extradited Trabelsi to the USA, after he was surrendered to FBI agents at the Melsbroek military airport.

Outcome

The case before the European Court continued after Trabelsi surrender to the USA and the Strasbourg Court held that Trabelsi extradition violated Article 3 of the European Convention since there was no **assurance** that he would be spared an **irreducible life sentence** and no procedure of U.S. law amounted to an objective mechanism for reviewing such sentences for the purposes of Article 3. The European Court also found that Belgium deliberately failed to comply with the interim measure indicated in pursuance of Rule 39 of the Rules of Court and thus also violated Article 34 of the European Convention.

After his extradition, Trabelsi was placed in detention in Rappahannock Prison in Stafford (Virginia) and subject to a number of special administrative measures, including solitary confinement. As of August 2019, Trabelsi has not yet been tried for the charges mentioned in the extradition request.

Marie-Emmanuelle Verhoeven

Extradition requested by:
Chile to Germany | Chile to India

Countries involved:
Chile | Germany | France | India

Arrested on:
February 16, 2015

Lawyers acting for the person sought:
India: Ramni Taneja

Charges

Assassination of Chilean senator Jaime Guzmán Errázuriz (1991)

Facts of the case

Marie Emmanuelle Verhoeven, a French national, lived in Chile from 1985 to 1995 working as a human rights advocate and as a special reporter in 1987 for the U.N. Economic Commission for Latin America and the Caribbean (UNECLAC). She allegedly participated in the assassination of a high-profile Chilean senator under the Pinochet regime. Authorities in Chile claimed that she was a key member of the Manuel Rodríguez Patriotic Front (FPMR), a paramilitary organization advocating for a Marxist-Leninist ideology, whose primary goal was to overthrow the Pinochet regime and who ultimately orchestrated the assassination of Senator Guzmán. She returned with her two sons to France in July 1995 and was eventually arrested at the Hamburg Airport (Germany) on 25 January 2014 by German police acting in accordance with an **Interpol Red Notice** requested by Chile.

Extradition proceedings & key legal arguments

On 6 June 2014, Verhoeven's extradition from Germany to Chile was rejected when the Hamburg regional court found insufficient grounds to grant surrender. Throughout the process in Germany, her lawyer argued that Verhoeven was being **politically persecuted** by Chile because she 'defended the human rights of prisoners' during the Pinochet regime but it is unclear on what grounds extradition was refused.

A year later, on 16 February 2015, Verhoeven was again stopped and arrested at the border between India and Nepal based on an Interpol Red Notice. On 21 February 2015 she was placed in the Tihar jail in New Delhi (India). Her

lawyer claimed that Chile's qualification of Verhoeven as a 'fugitive criminal' for purpose of inclusion in the Interpol Red Notice system was abusive. On 21 September 2015, the Delhi High Court concluded that her arrest was illegal and ordered her release. The next day, however, she was detained on a new provisional arrest warrant based on the pending extradition request from Chile.

A key issue in her extradition proceeding in India was whether there was a **binding extradition treaty** between India and Chile, by virtue of Section 2(d) of the 1962 Indian *Extradition Act*. More specifically, the question was whether the bilateral treaty governing extradition between Chile and the UK (signed in 1897 and ratified in 1898) was binding on India, even if it was not confirmed after the partition of India in 1947. In a 2016 ruling the New Delhi Supreme Court reiterated the view – already established in earlier case-law - that the independence of India did not put an end to the treaties entered into prior to 15 August 1947 by the British Government. Thus, the Chile-UK extradition treaty was still valid and binding.

Throughout her detention in Tihar, Verhoeven made repeated complaints about the poor detention conditions. In response, France made several unsuccessful attempts to fight for Verhoeven's release on bail from Tihar on **humanitarian grounds**, also citing breaches of the 1963 Vienna Convention on Consular Relations.

In June 2017, the Indian Ministry of External Affairs Sushma Swaraj informed local Metropolitan Magistrate Jyoti Kler (before whom the judicial proceeding against the person sought was still pending) that the executive had decided to terminate the extradition process under the relevant section of the 1962 *Extradition Act*. Swaraj stated that the Indian 'Government, having considered the French request, the mental and physical health of [the person sought], and the commitment of the French government in this matter, decides that it would [be] just and expedient to allow [her] on **health and humanitarian grounds** to go to France'.

Outcome

Verhoeven was released in July 2017 and returned to France. In December 2018, her name was removed from the Interpol red notice list.

War Crimes

Slobodan Milošević

Extradition request by:
ICTY to Serbia

Countries involved:
Federal Republic of Yugoslavia | Kosovo | Croatia | Bosnia–Herzegovina

Extradition granted on:
28 June 2001

Lawyers acting for the person sought:
FRY: Veselin Cerovic
The Nethelrlands: Eric Olof and Nico Steijnen

Charges

66 counts of crimes against humanity, war-crime, genocide committed during the wars in former Yugoslavia (1990 onwards).

Facts of the case

Milošević served as the President of Serbia (originally the Socialist Republic of Serbia, a constituent republic within the Socialist Federal Republic of Yugoslavia) from 1989 to 1997 and President of the Federal Republic of Yugoslavia (FRY) from 1997 to 2000. During the NATO bombing of Yugoslavia in May 1999, Milošević was indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) with crimes against ethnic Albanians in connection to the war in Kosovo. A few days later, a warrant for his arrest was sent to the FRY Minister of Justice. At the time, Milošević was still President of the FRY – a post he resigned in October 2000.

Extradition and key legal arguments

In April 2001, Milošević was arrested on the basis of domestic charges of corruption, not the ICTY charges.

On 23 June 2001, a federal Government decree was passed (after a failed attempt to pass a federal statute) in FRY to regulate cooperation with the ICTY and allow the surrender of indicted persons. The federal decree also permitted persons sought to serve the sentence locally, once the judgment against them had become final. Milošević's lawyers immediately petitioned the Federal Constitutional Court on both substantive (violation on the constitutional **bar against the extradition of nationals**) and procedural grounds (absence of Montenegro cabinet ministers in the vote on the decree). On 28 June 2001, the

FRY Constitutional court ordered the decree suspended until it had ruled on its constitutionality.

Against this background, on 28 June 2001 the Government of Serbia – a State of the FRY - took the matter into its own hands. Following a cabinet vote (15 in favour-1 against- 6 abstentions) that established cooperation with the ICTY, Milošević was immediately transferred by helicopter first to a U.S. air base in Bosnia and then to The Netherlands.

Over the years, serious questions have been raised on the legality of the decision of the Serbian authorities to transfer Milošević to the ICTY. Opponents to the decision have argued that the ICTY arrest warrants and surrenders orders were served to the FRY and not the Serbian authorities and thus the latter had no authority to order surrender. Others have noted that Milošević had never actually been served with the ICTY indictment before surrender. More broadly, it is doubtful whether the Republic of Serbia had authority to entertain relationships with the ICTY given that, under the FRY Constitution, foreign relationships are a federal matter

Milošević sought judicial review of his transfer to the ICTY before the ICTY and the Dutch court, calling it a **deportation**.

His preliminary motions filed to the ICTY were however dismissed in November 2001 on the rather unconvincing ground that *'the circumstances in which* Milošević was arrested and transferred - by the Government of Serbia, to whom no request was made, but which is a constituent part of the FRY, to whom the request of transfer was made – are not such to constitute an egregious violation of the accused's rights'.

As per the motion filed with the Dutch courts, the President of the District court of the Hague stated that he was not competent to consider his request for release. In December 2001, Milošević filed an application to the European Court of Human Rights arguing, among other things, that the **manner of his transfer** from Serbia to the ICTY breached Article 5-1 of the European Convention on Human Rights. His application was however dismissed for his failure to pursue all avenues of domestic appeals against the decision of the District court of the Hague.

Outcome

The criminal trial against Milošević *at the ICTY* began on 12 February 2002, with Milošević representing himself in the proceeding. The length of the trial was presumed to be two years: however, multiple adjournments led to four years of hearing, during which over 290 witnesses testified. Before the trial came to a close, on 11 March 2006 Milošević died of heart attack in his cell in the UN war crimes tribunal's detention center, located in the Scheveningen section of The Hague, Netherlands.

Erich Priebke

Extradition requested by:
Italy to Argentina | Germany to Argentina | Germany to Italy

Countries involved:
Italy | Argentina |Germany

Extradited to Italy on:
20 November 1995

Lawyers acting for the person sought:
Argentina: Pedro Bianchi
Italy: Paolo Giachini, Carlo Taormina

Charges

Genocide, war crimes (intentionally directing attacks against the civilian population or against individual citizens not taking part in the hostilities) and crimes against humanity (1944)

Facts of the case

On 23 March 1944, German troops stationed in Rome gathered 335 Italian civilians from local prisons and streets, shuttled them to the Ardeatine caves on the outskirts of the city, and executed them all. The **Ardeatine massacre** was a reprisal for a partisan attack conducted on the previous day in central Rome against the SS Police Regiment Bozen. Erich Priebke, an *SS-Hauptsturmführer* at the time, was suspected to have been one of the authors of this massacre alongside with Herbert Kappler and other Nazi officers. As the war came to a close, Priebke became untraceable and escaped justice by fleeing a British prison camp in Italy to Vatican City. There, Bishop Alois Hudal gave Priebke false papers to travel to Argentina. Instead, in 1948 Kappler was convicted by an Italian military court and sentenced to life in prison, although he later escaped to Western Germany in 1977, and died in 1978. In early 1994, an investigative journalist for ABC News located and interviewed Priebke, who had been living in Argentina. On 9 May 1995, a judge of the Rome Military Court signed an arrest warrant for Priebke. Shortly thereafter, both Italy and Germany requested his extradition for the purpose of conducting a criminal prosecution against him in their respective countries.

Extradition proceedings & key legal arguments

In response to Italy's extradition request, Priebke argued for the non-applicability of the 1987 **bilateral extradition treaty** between Argentina and Italy based on the principle of **non-retroactivity**. He also claimed a **political offense exception** (under Article 5 of the bilateral treaty) and that his actions during WWII were merely a product of the chain of command in a time of war. Finally, he argued that the 15-year **statute of limitations** for criminal prosecution under Argentine law had expired.

In response to his submissions, the Bariloche Federal Court held on 4 May 1995 that the extradition treaty between Argentina and Italy was applicable to his case and that he should be extradited. This conclusion was rejected by the Argentinian Federal Appeal Court, and the extradition was denied on 24 August 1995.

The appellate decision was then overruled by the Supreme Court of Argentina on November 2, 1995, which held that the extraditable charges included genocide, crimes against humanity, and war crimes, so extradition should be granted. Regarding the wording of the bilateral extradition treaty, the Supreme Court reasoned that while the charges were not explicitly included in its categorization of extraditable offenses, the **spirit of the treaty** was that of international cooperation and assistance in judicial operations and that such heinous crimes could not be excluded based solely on a technicality.

In November 1995, at 82 years old, Priebke was surrendered to Italy.

Outcome

In Italy, the criminal case against Priebke ended in November 1998, when the Italian Supreme Court upheld an earlier 1998 judgment of the Rome Military Court of Appeal that had sentenced Priebke (and codefendant Hass) to life imprisonment for crimes against humanity. In the meantime, Germany had requested Priebke's extradition from Italy for the murder of two German citizens. In August 1996, the German extradition request played a crucial role in keeping Priebke in detention (under provisional arrest), in spite of his acquittal by a Military court of first instance, due to statute of limitations. Later on, Italy denied surrender to Germany given that an ongoing Italian criminal proceeding was pending against Priebke, thus rendering extradition inadmissible.

Priebke was allowed to serve his final sentence under house arrest due to his age and died in Rome on 11 October 2013 at the age of 100.

Turkish Soldiers

(Süleyman Özkaynakçı, Uğur Uçan, Ahmet Güzel, Mesut Fırat, Gencay Böyük and Bilal Kurugül and others)

Extradition request by:
Turkey to Greece

Countries involved:
Turkey | Greece | Germany

Extradition denied on:
26 January 2017

Lawyers acting for the persons sought:
Greece: Omiros Zelios

Charges

Involvement in the 2016 Turkish coup, attempted murder, participation in an armed terrorist group, military desertion and theft of military material (2016)

Facts of the case

On 16 July 2016, a group of eight Turkish soldiers fled to Greece in a Black Hawk helicopter after a coup against President Tayipp Erdogan of Turkey was unsuccessful. The helicopter was returned the next day but the soldiers immediately filed an application for asylum. Nearly 250 people died and more than 2,200 were wounded in Turkey while fighting the coup-attempt. The group of soldiers was comprised of three majors, three captains, and two sergeant majors. The Turkish government led a crackdown on alleged coup supporters, with the dismissal of more than 150,000 state employees and the arrest of some 50,000 people. Opponents of President Erdogan's claimed that such tactics were an attempt to stifle political dissent and prevent international embarrassment. Turkey branded the eight soldiers as 'traitors and coup plotters' and repeatedly demanded that they be extradited to Turkey for prosecution of crimes such as involvement in a coup, murder, and military desertion.

Extradition and key legal arguments

In July 2016, the men were sentenced by a Greek court to two-month imprisonment (suspended for three years) for their illegal entry into the country. Despite the conviction, the court recognized the mitigating circumstances of their entry due to threat of force. On 10 August 2016, the Istanbul Chief

Public Prosecutor's Office sent the first official extradition request for the eight soldiers in connection to their involvement with the attempted coup. The soldiers remained in custody under strong police protection in Greece as their asylum applications and extradition cases pended. On September 21, 2016, Greece's political asylum commission denied three of the soldier's applications for asylum, and another four were denied asylum in October 2016.

On first instance, extradition proceedings against the soldiers were held separately before different courts of law. On 5 December 2016, a Greek court refused Turkey's extradition request for three of the soldiers, reasoning that to do so would be to put their lives at risk once surrendered to Turkey. A day after this decision, a separate Greek court granted extradition of another three soldiers. Another Greek court ruled in favor of the last two Turkish soldiers, denying extradition. All rulings were appealed to the Supreme Court of Greece.

On 26 January 2017, the Supreme Court refused the extradition of the eight soldiers. The Court held that there were serious concerns as to whether the persons sought would a) receive fair trials in Turkey and b) be subject to humane treatment pursuant to Article 3 of the European Convention on Human Rights throughout the process. Since 2017, Turkey has filed two additional extradition requests with additional supporting evidence against the eight soldiers but both requests have however been denied by the appropriate Greek judicial authorities.

Current developments

Despite the Greek government's explicit political disapproval of the soldier's presence in Greece, Turkey has since responded with retaliation to the refusal to surrender, arresting and holding captive two Greek soldiers entering Turkish airspace in the midst of bad weather in March of 2018. Turkey claimed that the soldiers were attempting espionage and suggested a soldier exchange in return for the eight Turkish soldiers. Prime Minister Alexis Tsipras vehemently denied the request. In response to Turkish retaliation over the decision, Tsipras also maintained that, while the perpetrators of the Turkish alleged coup were not welcome in Greece, the principle of separation of powers should be respected and independent judicial decisions held binding.

Vladimir Antonov and Raimondas Baranauskas

Extradition requested by:
Lithuania to the UK

Countries involved:
UK | Lithuania

Arrested on:
24 November 2011

Lawyers acting for person sought:
UK: for **Antonov** James Lewis QC and Rachel Scott
UK: for **Baranauskas** John Jones QC and Aaron Watkins

Charges

Misappropriation of bank assets, document forgery, fraudulent accounting, asset embezzlement (2011)

Facts of the case

Vladimir Antonov (a Russian citizen) and Raimondas Baranauskas (a Lithuanian citizen) are two bankers and businessmen charged with misappropriating bank funds by taking exorbitant sums of cash and securities out of the accounts of the Lithuanian bank 'Snoras'. They allegedly transferred those funds and assets into personal accounts or accounts under their direct control. The amounts transferred during the 2008-2011 period totaled approximately 478 million euros, as well as over 10 million U.S. dollars. The pair were also alleged to have forged false documents that they submitted to the Credit Institutions Supervision Department of the Lithuanian central bank in order to conceal 33 illegal transfers between 2008 and 2011. These forgeries took the form of fake submissions emanating from 2 Swiss banks, which inaccurately showed that securities valued at approximately 320 million euros were deposited with Snoras. These actions constituted the crime of fraud in excess of over 400 million euros, influencing the collapse of the Snoras bank in November 2011. To protect small shareholders and savings accounts holders, on 16 November 2011, 100% of shares of the bank Snoras were nationalised by the Lithuanian government.

Extradition proceedings & key legal arguments

A **European arrest warrant** relating to each of the persons sought was issued by the Prosecution general office of Lithuania (a **judicial authority** for the purpose of the EAW scheme) on 22 November 2011.

The persons sought were arrested in London on 24 November 2011 and later released on conditional bail. In January of 2014, Judge Zani of the Westminster Magistrates' Court allowed surrender to Lithuania for both Antonov and Baranauskas and held that that there was no evidence they would receive an unfair trial or be subject to inhumane treatment in the prisons there. On the specific issue of alleged inappropriate influence on the trial judge by executive authorities in Lithuania, Zani heard **expert evidence** on the independence of the Lithuanian judiciary and remained 'confident that the trial judge will deal appropriately with any member of the executive that might have the temerity to try to impose their influence on him or her'.

The persons sought appealed the decision, maintaining that the extradition request and subsequent charges were politically motivated and created by the Lithuanian government to use the bank main shareholders as 'scapegoats' to the bank's collapse. They argued that the Lithuanian president and government themselves were behind the plunder of the bank in order to achieve political prestige. Antonov, specifically, argued that his prosecution was based predominantly on his Russian nationality and political affiliations. Nevertheless, on 7 June 2015, the High Court upheld the first instance decision to extradite. Judges Lord Justice Richard Aikens and Sir Peregrine Simon of the High Court of London dismissed all grounds of appeal and stated that the decision to issue EAWs for both partners was 'valid and justified.

In the immediate aftermath of the High Court's decision, both Vladimir Antonov and Raimondas Baranauskas **disappeared** from the UK. It later emerged that they had fled to Russia – a country that refuses to provide legal assistance to Lithuania. Following their disappearance, the Lithuanian prosecutor's office released a statement denouncing the 'complete and utter failure of British law enforcement' in the case.

Current developments

From Russia, Antonov sued Lithuania authorities in 2016 from the Moscow Arbitration Court for $612 million, alleging property damage and the defamation of his business reputation. He claimed damages in excess of $622 million from Lithuania's Ministry of Justice and demanded the retraction of a statement by the Lithuanian president, Dalia Grybauskaite, calling his activity 'a brazen attack against the Lithuanians banking system and the interests of the Lithuanian citizens'.

In April 2018, Antonov was again arrested in St. Petersburg on fraud charges. In a pre-trial plea deal, he admitted to embezzling 15 million rubles from the St. Petersburg-based Sovetsky Bank. In March 2019, the St. Petersburg Vyborg District Court sentenced Antonov to two-and-a-half years of imprisonment and a fine of 300,000 rubles (around $4,600) for the embezzlement.

Kim Dotcom (aka Kim Schmitz)

(also with Matthias Ortmann, Bram van der Kolk and Finn Batato)

Extradition requested by:
USA to New Zealand

Countries involved:
USA | New Zealand

Indicted in the USA on:
5 January 2012

Lawyers acting for the person sought:
New Zealand: Rob Mansfield
USA: Ira Rothken

Charges

Conspiracy to commit racketeering, criminal copyright infringement, money laundering and fraud by wire (2012).

Facts of the case

Kim Dotcom, a German-Finnish Internet entrepreneur, was the founder of the now-defunct file hosting service *Megaupload*, and has subsequently been accused of costing the entertainment industry $500 million through pirated content uploaded to his site. Megaupload had 150 million registered users and received a reported income in excess of $175 million. On 5 January 2012, indictments were filed in the USA against Dotcom and other company executives (Ortmann, van der Kolk, and Batato) with accusations including online piracy, racketeering, conspiracy to commit copyright infringement, and conspiracy to commit money laundering.

Extradition proceedings & key legal arguments

On 20 January 2012, pursuant to a request from the U.S. Federal Bureau of Investigation, the New Zealand Police raided Dotcom's home in Auckland, New Zealand and placed him in custody. On 5 March 2012, a formal extradition request from the USA was filed in New Zealand based on the 1970 bilateral treaty governing extradition between the USA and New Zealand.

As an initial response to the **extradition request**, Dotcom argued that he was unable to present a proper defence because the USA had threatened to seize any funds he tried to spend on international copyright experts. He claimed that he

needed about $500,000 to get evidence from the appropriate experts. Lawrence Lessig, a Harvard Law professor and international expert in copyright and fair use, provided his written opinion pro bono. Lessig argued that there were no **legal grounds** to **extradite** Dotcom, and the allegations and evidence made public by the U.S. Department of Justice were not sufficient to support a *prima facie* case recognizable by federal law in the USA. Throughout the extradition proceedings, Dotcom lawyers argued that an internet service provider is not liable for the actions of its users and the focus should instead be directed towards the copyright infringers themselves. The lawyer argued that the technology that was utilized was copyright neutral and that the offenses are **not extraditable offenses**. Dotcom's lawyer cited a copyright case from 1985 in which the U.S. Supreme Court held that copyright infringement was a civil matter and could not be prosecuted as criminal fraud. *Dowling v. United States*, 473 U.S. 207 (1985). On 23 December 2015, a District Court Judge in New Zealand stated that Dotcom was **eligible for extradition** on all thirteen counts from the indictment on the basis that the USA had a 'large amount of evidence' which supported a **prima facie case**. This ruling was also upheld by New Zealand High Court.

In July 2018, the New Zealand Court of Appeal rejected Dotcom's (and other codefendants') attempt to overturn the earlier ruling by stating that the U.S. Government had offered a 'clear prima facie case to support the allegations that the appellants conspired to, and did, breach copyright willfully and on a massive scale for commercial gain.' The Court of Appeal also held that, in relation to **dual criminality**, 'the persons sought are accused of conduct that, if proved, would establish extradition offenses in New Zealand law.'

Current developments

Dotcom filed a **further instance of appeal** with the Supreme Court of New Zealand that heard his case in June 2019. The case before the Supreme Court focused on whether the copyright infringement offenses are **extraditable** under the terms of the USA-New Zealand bilateral treaty and the domestic *Extradition Act 1999*. The judgment is expected later in 2019. Ultimately, the decision on whether to surrender Dotcom to the U.S. authorities will rest with New Zealand's Justice Minister or Minister of Justice Andrew Little.

Fabio Riva

Extradition requested by:
Italy to the UK

Countries involved:
Italy | UK

Extradited to Italy on:
5 June 2015

Lawyers acting for the person sought:
UK: Edward Fitzgerald QC, Aaron Watkins
Italy: Stefano Goldstein, Nerio Diodà

Charges

Conspiracy to commit public health and safety offences, crimes against the environment, corruption (2012).

Facts of the case

Fabio Riva is a former CEO of ILVA, a steel plant located in Taranto, Italy. In 2012, environmental investigations were carried out on the emissions of the ILVA steel plant and it was alleged that a number of illnesses and deaths had resulted from those emissions. ILVA was, at the time, the largest steel plant in Western Europe. The criminal allegations against Riva concerned the supposedly environmentally unsound running of ILVA since 1995 - when the Riva family group acquired the ILVA steel plant from the Italian Government.

Extradition proceedings & key legal arguments

In November 2012, Riva was charged by the Taranto judge of the preliminary investigations. Around January 2013, when Riva was in London, the Italian judicial authorities issued an **accusation European Arrest Warrant** to seek his surrender to Italy. Riva challenged the EAW on several grounds. In 2014, a second accusation EAW against Riva was issued by a court in Milan, for related criminal proceedings.

One of the key arguments advanced by Riva against both EAWs was that Italian prison conditions did not comply with Article 3 of the European Convention on Human Rights, according to which 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment.' More specifically, Riva relied on the 2013 Strasbourg ruling in the pilot judgment *Torreggiani* (see European Court of Human Rights, *Torreggiani and others v. Italy*, Application No

43517/09), which held that the well-documented **over-crowding of Italian prisons** was widespread and systematic, thereby violating Article 3 of the ECHR. In response, an **assurance** dated 17 December 2013 was sent by the Italian authorities to the UK courts stating that Riva's Article 3 rights would be respected and that he would not be sent to either of the two prisons (Busto Arsizio and Piacenza) that triggered the complaint in the *Torreggiani* case. In 2014, District Judge Zani of the Westminster Magistrates' courts dismissed Riva's argument and found that 'the Italian authorities are not only well aware of their Convention obligations but that they will abide by them.'

Riva appealed the court ruling to the High Court of Justice of the UK, where his Article 3 appeal was considered jointly with the appeal submitted by another person sought (namely Mr. Mohammed Elashmaway, whose EAW had been issued by another Italian court, located in Brescia). On appeal, the High Court of Justice stated that in the UK 'the Article 3 test in the context of extradition is whether there are **substantial grounds for believing that there is a real risk** that the person extradited would be subjected to inhuman or degrading treatment or punishment by reason of the prison conditions upon his return and (if convicted) during any imprisonment. To make a conclusion based on this test, the court has to examine the present and prospective position as best it can on the materials now available. Following a detailed analysis of the actions taken by the Italian Government after the Torreggiani pilot judgement, the High Court concluded that, in spite of the expert evidence provided by the person sought, there were 'no substantial grounds' for believing that there was any real risk that Riva would suffer breaches of his Article 3 rights if extradited to Italy. While another appeal on other possible bars to surrender was still pending, Riva consented to his extradition in 2015.

Outcome

On 5 June 2015, Riva was extradited from the UK and accompanied by Interpol staff on a plane from London to Rome. Upon arrival to the Rome Fiumicino Airport, Riva was transferred to the *Guardia di Finanza* of Taranto, where he was imprisoned. Riva was later found guilty of some of the charges by courts in Milan and Taranto. In 2016, Riva was granted home detention on grounds of poor health.

Navinder Singh Sarao (aka Hound of Hounslow)

Extradition requested by:
USA to the UK

Countries involved:
UK | USA

Extradition executed on:
14 October 2016

Lawyers acting for the person sought:
UK: James Lewis QC, Joel Smith
USA: Roger Anson Burlingame, Nancy L. DePodesta

Charges

Wire fraud, commodities fraud, commodities manipulation, spoofing (2010).

Facts of the case

On 6 May 2010, a 'flash crash' hit the U.S. stock market for 36 minutes. Stock indexes, such as the S&P 500, Dow Jones Industrial, and Nasdaq, collapsed and rebounded very rapidly. The Dow Jones Industrial Average had its second biggest intraday point drop and overall it is said that over 1 trillion dollars was lost. The alleged offences took place on the Chicago Mercantile Exchange and Sarao was charged with spoofing activities in April 2015 by the U.S. Department of Justice. To be more accurate, 'layering' (a type of 'spoofing') is a form of manipulative, high-speed activity in the financial markets. In a layering scheme, a trader places multiple, bogus orders that the trader does not intend to have executed – for example, multiple orders to sell a financial product at different price points – and then quickly modifies or cancels those orders before they are executed. The purpose of these bogus orders is to trick other market participants and manipulate the product's market price. The trader seeks to mislead and deceive investors by communicating false pricing signals to the market, to create a false impression of how market participants value a financial product, and thus to prevent legitimate forces of supply and demand from operating properly.

Extradition proceedings & key legal arguments

Sarao fought his extradition battle before the courts of the United Kingdom as the alleged conduct took place while he was working as a futures trader from

his home in the UK. Notably, Sarao is of British nationality, had never been to the U.S., and all his alleged criminal conduct had taken place in the UK.

In March 2016, a district judge at the Westminster Magistrates' court ordered the extradition of Sarao who then sought permission to appeal to a panel of two judges of the High Court of Justice. The person sought advanced two main grounds of appeal on: a) **double criminality;** and b) the argument that extradition **would not be in the interest of justice** (so called forum bar according to the UK *Extradition Act 2003*).

On the **double criminality** challenge, the High court upheld the earlier ruling according to which if the conduct mentioned in the extradition request took place in the United Kingdom, such conduct would amount to an offence under s. 2 of the *Fraud Act 2006*.

On the forum bar, the legal fight turned to whether the conduct could have also been tried in the United Kingdom, thus making extradition against the interests of justice. It was the opinion of the judges of the High Court that the person sought could reasonably be put on trial either in the UK or in the U.S. However, the High Court disagreed that the extradition of Sarao would be against the interests of justice, noting that there were powerful U.S. connecting factors in this case. Sarao was trading internationally on, or through, a U.S. market, even if that market was itself worldwide in scope. The integrity of the Chicago Mercantile Exchange is a matter of importance, self-evidently put at risk by market manipulation. Furthermore, the judges noted that "most of the loss or harm took place" in the U.S. and the harm suffered by investors, trading firms, and individuals based in the U.S. was clear from the documents supporting the extradition request. For these reasons, permission to appeal was refused.

Outcome

Sarao was extradited to the USA in October 2016 to face federal charges. He flew to Chicago and pleaded guilty to wire fraud and spoofing and agreed to pay the U.S. government $12.8 million (the amount federal prosecutors said he earned from illegal trading and cheating the market). He was then released on bond and allowed to return to the UK pending sentencing in the USA where the combined charges may carry over 350 years in prison. As of August 2019, Sarao has not yet been sentenced and it is believed that his ongoing cooperation with U.S. federal prosecutors could lead to a reduced sentence.

Christopher Skase

Extradition requested by:
Australia to Spain

Countries involved:
Spain | Australia

Died in Maiorca (Spain) on:
6 August 2001

Lawyer acting for the person sought:
Australia: Shane Herbert
Spain: Antonio Coll

Charges

Fraud, dishonest conduct as a company director pursuant to the *Companies (Queensland) Code* 1982, false declaration by debtor or bankruptcy under s. 267 of the *Bankruptcy Act 1966* (Act 33 of 1966 of Australia).

Facts of the case

Christopher Skase was a multi-millionaire Australian entrepreneur. In 1975, he purchased Qintex, a small Tasmanian company and, over several years, turned it into one of Australia's largest corporations. By the late 1980s, the Qintex group was worth 1.5 billion Australian dollars (AUD). Skase owned five resorts as well as interests in a television network, a football club, and two major resorts in Queensland. Skase became known for his displays of wealth, but his business collapsed in 1990-1991. Bankruptcy charges were brought against him in Australia as it was alleged (after investigations by the Australian Securities Commission) that he had transferred millions of Australian dollars from the company accounts to his own. The failure of Qintex led to the collapse of the State Bank of Victoria in the same year, then the largest corporate bankruptcy in Australian history.

Extradition proceedings & key legal arguments

Skase fled Australia in 1991 and went to Maiorca, Spain. Through the late 1990s, Australian media frequently reported on his whereabouts and health status in what was popularly known as the 'Chase for Skase.'

An extradition request was sent by the Australian Embassy in Madrid to the Spanish Government on March 3, 1994 on the basis of a bilateral treaty on extradition that was signed by Australia and Spain in 1987. Following the

preliminary approval by the Spanish Minister of Justice, the extradition judicial process began.

Throughout the extradition proceedings in Spain, Skase argued against surrender on two fronts: a) **lack of double criminality** on some of the charges brought against him by the Australian authorities; and b) **humanitarian concerns** due to his inability to travel to Australia due to a life-threatening lung condition. On September 8, 1994, a first ruling of a section of the *Audiencia Nacional* (a special appellate court of Spain) granted extradition with respect to a group of charges and denied it in relation to another group of charges. An additional condition of extradition was that Skase's transport to Australia by sea needed to include specialist medical care.

The Australian Government then appealed to the full panel of the *Audiencia Nacional* that passed a final decision on 19 December 1994. The decision broadly construed the concept of **human rights protection** for the person sought in this case. It stated that 'the **basic individual right to life, physical integrity, and health must prevail over a State's right to penalise including a State's authority to prosecute.'** Therefore, in this extradition proceedings, 'it is appropriate to sacrifice the right of the Australian government to prosecute and punish the offences attributed to Skase if, in implementing their right, his life or his health may be endangered.' Although it was acknowledged that most of the criminal charges brought against Skase constituted crimes in Spain, the court held that he was too sick to be transported back to Australia by air or by sea. In the course of the extradition proceedings (on first instance and appeal) as many as eighteen medical doctors testified as experts for and against the safety of Skase's travel to Australia.

Outcome

Skase never returned to Australia and died of stomach cancer in Majorca in August 2001.

Edward Snowden

Extradition requested by:
USA to China (Hong Kong) | USA to Russia (informally) |USA to Venezuela (preemptively)

Countries involved:
U.S. | China (Hong Kong) | Russia | Venezuela

Asylum granted in Russia on:
1 August 2013

Lawyers acting for the person sought:
Russia: Anatoly Kucherena
United States: Jesselyn Radack, Ben Wizner
Hong Kong: Albert Ho, Jonathan Man, Robert Tibbo
Germany: Wolfgang Kaleck

Charges

Theft, espionage through unauthorized communication of defence information, and willful communication of classified information to an unauthorized person.

Facts of the case

Edward Snowden was an employee of the U.S. Central Intelligence Agency (CIA) and a contractor for the National Security Agency (NSA). In early 2013, Snowden reached out to journalists regarding data he had collected on global email and telephone surveillance programs while working at these agencies. He believed the programs to be illegal, and after failed attempts to bring up these concerns with supervisors, decided to disclose what he collected. In May 2013, Snowden ended his job with an NSA contractor and left for Hong Kong. Starting on 5 June 2013, a number of news agencies began publishing articles based on the documents that Snowden had leaked.

Extradition proceedings & key legal arguments

On 22 June 2013, U.S. authorities charged Snowden with theft, unauthorized communication of national defence information, and willful communication of classified information to an unauthorized person. The latter two charges were violations of the *1917 Espionage Act*, a statute passed to prosecute spies during World War I.

The U.S. Government immediately filed paperwork with Hong Kong authorities to detain Snowden for the purpose of extradition. Although there is no

formal extradition treaty between the U.S. and China, a relevant source governing the case was the *U.S.-Hong Kong Agreement for the Surrender of Fugitive Offenders*. This agreement was signed shortly before Hong Kong transitioned from the UK to China, and was still in effect at the relevant time. The agreement stipulated that both the USA and Hong Kong agreed to surrender fugitives when the principle of **double criminality** applied, but either party retained the **right to refuse surrender** in cases of certain **politically motivated charges**. Furthermore, China retained the right to veto a surrender if it believed the action would harm China's defense, foreign affairs, or essential public interest or policy.

Shortly after Snowden's identity and whereabouts were revealed, he left Hong Kong by plane. Authorities in Hong Kong did not stop Snowden's departure because the paperwork submitted by the USA was deficient. More specifically, the filed documents had an incorrect middle name for Snowden and failed to provide his passport number. Due to these errors, Hong Kong authorities stated that they had no legal authority to prevent Snowden's departure. Coincidentally, Chinese and Hong Kong officials expressed concern over some of Snowden's allegations that the USA had hacked mobile phone carriers in China and Hong Kong. Snowden intended to travel to Central America with connecting flights through Moscow (Russia) and Havana (Cuba). However, the U.S. Department of State rescinded Snowden's passport. Consequently, he became stranded upon landing at the Sheremetyevo Airport in Moscow on June 23, 2013.

President Obama vowed to pursue all available legal channels to extradite Snowden. Despite informal **assurances** by the USA that he would not face torture nor the death penalty, Russian President Vladimir Putin refused extradition because there was **no extradition treaty** between Russia and the USA, and because Snowden was within a 'transit area' within the airport. Thus, he had not yet technically entered Russia. The USA also began sending **pre-emptive extradition requests** to countries for Snowden's arrest and extradition should he step foot in those countries. This included Venezuela, rumored to be Snowden's final destination, as well as Denmark, Finland, Norway, and Sweden.

Current developments

On 30 June 2013, Snowden applied for asylum in Russia as well as 20 other countries across Europe, Asia, and Latin America. On 1 August 2013, Russia temporarily granted him asylum for one year, while considering his application for permanent **political asylum**. As a result, he was finally able to leave Moscow's Sheremetyevo Airport after having lived there for over a month. One year later on August 1, 2014, Snowden received a three-year residency permit in Russia that was later extended to 2020. He is reportedly working in the IT field in Russia. On October 29, 2015, the European Parliament passed a measure recognizing Snowden's status as a **whistleblower** and an international human rights defender. The measure called on EU member states to drop any pending criminal charges against Snowden, grant him protection, and prevent his extradition or rendition by third parties. As of August 2019, Snowden remains in Moscow, Russia

Paul Watson

Extradition requested by:
Costa Rica to Germany | Japan to Germany | Costa Rica to the USA

Countries involved:
Costa Rica | Japan | Germany | USA | France

Interpol Red Notice issued on:
14 September 2012

Lawyers acting for person sought:
Germany: Oliver Wallasch
USA: Rachel Eve Buker, Daniel P. Harris, Charles Philip Moure
Costa Rica: Abraham Stern

Charges

Costa Rica: Causing danger of shipwreck or drowning, attempted murder (2002)

Japan: Breaking into a vessel, damage to property, forcible obstruction of business, causing injury (2010).

Facts of the case

Captain Paul Watson founded the *Sea Shepherd Conservation Society* in 1977, aiming for the conservation of the marine wildlife. The group has a small fleet of ships which have been used to disrupt whale hunting activities, among many other conservation efforts. Watson was involved in a series of incidents, that led to criminal investigations in Costa Rica and Japan. In 2002, Costa Rican authorities accused him of attempted murder and causing danger to a shipwreck. The charges were related to a confrontation during the month of April of that same year between Watson's vessel and a Costa Rican vessel, that was allegedly conducting illegal shark finning operations. In 2010, Japanese authorities brought multiple charges against Watson for a series of confrontations between the *Sea Shepherd* ships and Japanese whaling ships. These confrontations culminated in an incident in January of 2010 in which a Japanese whaling ship allegedly rammed and sank a *Sea Shepherd* ship, the *Ady Gil*, in the Antarctic Ocean. Afterward, Watson ordered the captain of the *Ady Gil* to board and confront the Japanese whaling ship. The captain of the *Ady Gil* was arrested, sentenced to five months in a Japanese prison and then proceeded to implicate Watson in the incident.

Extradition proceedings & key legal arguments

On 13 May 2012, Watson was arrested by German authorities while changing planes at the Frankfurt international airport. This arrest was based on the 2002 charges in Costa Rica. Watson was released on a €250,000 **bail**. As a condition to this release pending extradition proceeding, he had to regularly report to the German police authorities until a decision was made on surrender to Costa Rica. On 12 June 2012, the Government of Costa Rica formally requested Watson's extradition from Germany, and Japan asked for the same procedure shortly thereafter.

On 22 July 2012, Watson jumped bail and the Frankfurt prosecution office released a statement to announce that the extradition proceeding would continue to follow its course. By July 25 of 2012, Watson had fled Germany for Antarctica and the German authorities issued a warrant for his arrest. As Costa Rica insisted that he would get a fair trial if he was to be extradited, *Sea Shepherd Conservation Society* argued that Watson would be in danger if he was to enter the Costa Rican criminal justice system. Watson later stated that, in his views, the Costa Rican charges were filed because of pressure from the Japanese government and that he eventually would have been extradited to Japan if he had remained in custody.

Shortly thereafter, a German court ordered Watson extradition to Costa Rica, should he be found, and his passport and bail money were forfeited to German authorities. Two Interpol Red Notices, calling for Watson's detention, were issued on August 7 and September 14 of 2012 at the request of Costa Rica and Japan.

On 17 December 2012, a U.S. federal court issued an injunction against Watson and the *Sea Shepherd Conservation Society* that prohibited them from coming within 500 yards of Japanese whale research vessels. The injunction resulted from a lawsuit filed by the *Institute of Cetacean Research* (ICR), a Japanese whale research organization. Watson resigned as leader of the group shortly after. In November of 2013, Watson returned to the USA to stand trial in federal court on contempt charges for violating the terms of the 2012 injunction. Shortly after his arrival in the USA, a Costa Rican court issued an extradition request, calling for Watson's arrest. However, the extradition request was never acted upon by U.S. courts, and Watson's contempt case continued. After a lengthy trial, a U.S. Court of Appeals found Watson and the *Sea Shepherd Conservation Society* in contempt on 19 December 2014. Watson and the *Sea Shepherds* later settled the case with the ICR for $2.55 million in June 2015.

In November 2015, Watson filed a human rights lawsuit against Costa Rica with the *Inter-American Commission on Human Rights* (IACHR), alleging that Costa Rica lacked jurisdiction over his 2002 charges because the incident occurred in international waters.

Outcome

On 6 April 2016, Watson returned as the leader of the *Sea Shepherd Conservation Society*. In May 2016, France granted Watson asylum, thus protecting him from further extradition requests. He is reportedly living in an 18th-century chateau in Bordeaux, France. On 12 March 2019, the Criminal Appeals Court of the Second Judicial Circuit of San José in Costa Rica ruled in favor of Watson, by dropping all charges against him and giving closure to this legal dispute and the international arrest warrant issued 12 years earlier against him.

Renditions

Otto Adolf Eichmann (aka Ricardo Klement)

Rendition conducted by:
Israel from Argentina

Countries involved:
Argentina | Israel | Germany | Senegal

Executed on:
1 June 1962

Lawyers acting for person sought:
Israel: Robert Servatius

Charges

15 counts of war crimes, crimes against humanity and crimes against the Jewish people (1933 onwards).

Facts of the case

Eichmann was accused of being one of the major organizers of the Holocaust. As a senior SS officer, he was tasked with facilitating and organising the logistics involved in the mass deportation of Jews to concentration camps, primarily in Nazi-occupied Eastern Europe.

Circumstances of rendition and related legal proceedings

After the end of WWII, U.S. troops captured Eichmann but he managed to escape from a prison camp in Cham (Germany) in 1946.

Using false identity papers and the name of Ricardo Klement, in 1952 or 1953 Eichmann moved to Argentina (a country that had become a safe haven for Nazi criminals) and eventually worked as department head in Mercedez-Benz. A young Jewish girl that briefly dated Eichmann's son in Buenos Aires first reported his real identity to the authorities. Since Argentina had a history of turning down **extradition requests** for suspected Nazi criminals, Israeli Prime Minister David Ben-Gurion made the decision that Eichmann should be located and forcibly transferred to Israel for prosecution. Israeli secret service Mossad was in charge of this operation.

The Mossad team captured the person sought on 11 May 1960 near his home in Buenos Aires when he was returning from work by bus. Three agents placed him in a car and took him to one of several Mossad safe houses that had been arranged for the operation. After his identity was confirmed, a decision was made to return Eichmann to Israel on a flight. On 20 May 1960, Eichmann was

sedated by an Israeli doctor on the Mossad team and placed on the same plane that had carried Israel's delegation a few days earlier to the official 150th anniversary celebration of Argentina's independence. The plane stopped in Dakar (Senegal) for refueling and arrived in Israel on 22 May, where the announcement of Eichmann's capture was made to the Israeli Parliament.

In Argentina, the news of the abduction was met with violent protests and the Government summoned an urgent meeting of the U.N. Security Council. Argentina regarded the abduction as a breach of its sovereign rights. Although Israeli representative to the U.N. Golda Meir claimed that the abductors were not Israeli agents but private individuals, Resolution 138 (dated 23 June 1960) acknowledged an international '**violation of the sovereignty**' of the Argentine Republic and requested that Israel should make 'appropriate reparations'. After an additional round of negotiations, Israel and Argentina issued a joint statement on 3 August 1960 and agreed to end the dispute.

By the 1990s, the continuing presence of several Nazi criminals in Argentina became an embarrassment for the country that finally reversed his extradition policy. A few individuals were extradited back to Europe, including Erich Priebke (whose extradition case is reported in Part B of this book).

Outcome

The criminal trial against Eichmann was the first one held in Israel against an alleged Nazi criminal. The Israeli court determined, among other things, that the circumstances of his **rendition** had no direct consequences on the legality of the proceeding.

In 1961, Eichmann was found guilty of all charges in spite of his defense of 'just following orders' which was common also to all Nazis prosecuted in the Nuremberg trials. He was sentenced to death. An appeal against the judgment was lodged to the Israeli Supreme Court that dismissed it in March 1962. After petitions of clemency to the Israeli President were also rejected, Eichmann was executed by hanging on 1 June 1962. As of today, his execution remains the only case of **death penalty** enactment in the history of Israel.

Abd Al-Rahim Al-Nashiri

Rendition conducted by:
USA from the United Arab Emirates (UAE)

Countries involved:
USA | Yemen| UAE | Afghanistan | Thailand | Poland | Romania

Abducted in:
November 2002

Lawyers acting for person sought:
USA: Rick Kammen
ECtHR: James Goldston, Rupert Skilbeck, Amrit Singh, Nancy Hollander, Diana Olivia Hatneanu

Charges

Conspiracy to commit terrorist activities, including the bombing of U.S Navy destroyer *USS Cole* (2000) and the French oil tanker *M/V Limburg* (2002).

Facts of the case

Abd Al-Rahim Al-Nashiri is a Saudi Arabian national of Yemeni descent, considered to have been one of the most senior figures in Al Qaeda and suspected of masterminding and orchestrating the 2000 attack against the U.S. Navy destroyer *USS Cole* that took place in Yemen when the ship stopped in the Aden harbour for refuelling. The explosion killed 17 American sailors. He has also been suspected of masterminding the 2002 bombing of the French oil tanker MV *Limburg*, while it was in the Gulf of Aden. One crew member was killed and twelve others injured in this attack.

Circumstances of rendition and related legal proceedings

In October 2002 Al-Nashiri was located and captured in Dubai by domestic police or security forces of the UEA. By November 2002, he was transferred to the custody of the Central Intelligence Agency (CIA). He was subsequently held for over 5 years in several so called CIA *Black Sites* around the world. The purpose of rendition was to subject the person sought to so called Enhanced Interrogation Techniques (EIT). Earlier in 2002, the U.S. Department of Justice had provided the CIA with a legal opinion determining that ten specific EIT (including waterboarding) could be applied to suspected Al Qaeda terrorists.

In 2002, Al-Nashiri was briefly transferred to a secret CIA prison in Afghanistan (known as the 'Salt Pit') and then to another secret detention center

in Bangkok (Thailand), where he was twice subjected to waterboarding and other forms of EITs. In December 2002 he was then transferred to Poland on a chartered flight disguised under multiple layers of secrecy characterising flights that the CIA chartered to transport persons under the High-Value Detainee Programme. He was then moved from Poland to Morocco (in June 2003), to Guantanamo Bay Prison Camp (in September 2003) and to Romania (between 2004 and 2005). In the meantime, on 29 September 2004, he was tried *in absentia* and sentenced to death by a Yemeni court for his role in the USS *Cole* bombing.

In 2005, the Secretary General of the Council of Europe, acting under Article 52 of the Convention and in connection with multiple reports by human rights organisation of European collusion in secret rendition flights of Al Nashiri and other suspected terrorists, sent a questionnaire to the States Parties to the Convention asking to explain how their domestic law ensured the **effective implementation of the European Convention** on four issues: 1) adequate controls over acts by foreign agents in their jurisdiction; 2) adequate safeguards to prevent unacknowledged deprivation of liberty, including transport, with or without the involvement of foreign agents; 3) adequate responses (including effective investigations) to any alleged infringements of ECHR rights, notably in the context of deprivation of liberty, resulting from conduct of foreign agents; 4) whether since 1 January 2002 any public official had been involved, by action or omission, in such deprivation of liberty or transport of detainees.

In 2011 and 2012, Al-Nashiri filed two separate applications with the European Court of Human Rights against Poland and Romania for enabling his imprisonment, **torture** and **forced transfer** to and from their territories. In 2014 and 2018 respectively, the Strasbourg court found both Romania and Poland in breach of Article 3 of the European Convention on Human Rights, for their complicity in the CIA High Value Detainee Programme and their failure to investigate Al-Nashiri's allegations of mistreatment. In the Court's views, whether the authorities of Romania and Poland knew exactly what happened inside the detention facilities in their territories did not exonerate those Governments from their obligations under the Convention system.

Current developments

Since 2012, Al Nashiri has been under prosecution before a U.S. military court on war crimes charges that carry the **death penalty**. In 2019, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit vacated all pre-trial rulings made by the colonel presiding the military trial of Al Nashiri on grounds of a 'disqualifying appearance of partiality'. As of August 2019, Al-Nashiri continues to be detained in the Guantanamo Bay Detention Camp.

Hassan Mustafa Osama Nasr (aka Abu Omar)

Rendition conducted by:
USA from Italy

Countries involved:
USA | Italy | Egypt | Germany

Abducted on:
17 February 2003

Lawyers acting for person sought:
Italy: Carmelo Scambia
ECtHR: Luca Bauccio

Charges

International terrorism (2005).

Facts of the case

Abu Omar was a radical Egyptian cleric and alleged member of *al-Gama'a al-Islamiyya,* which has been designated by the USA as a terrorist organization supported by Osama bin Laden. In the 1990s, he fled Egypt due to the group's prosecution as a terrorist organization by the Egyptian government. After periods in Albania and Germany, he moved to Italy in 2001. In Italy, Abu Omar was granted political asylum.

Circumstances of rendition and related legal proceedings

On 17 February 2003, Abu Omar was approached by plainclothes *carabinieri* in the streets of Milan with the request to show his passport. According to later testimonies, he was then grabbed by two other men that shoved him inside a van. Abu Omar was then brought the U.S. Airbase in Aviano (Italy) and later secretly flown from Aviano to Egypt, via the Ramstein airbase in Germany. In Egypt, the CIA turned him over to intelligence officials, allegedly for interrogation. Abu Omar later stated that he was subject to **torture and various forms of mistreatment** (beatings, sleep and food deprivation, electroshock, etc) for the duration of his detention in Egypt.

On 19 April 2004, Abu Omar reappeared after 14 months of detention in Cairo and a local court released him on grounds of insufficient evidence of his involvement in terrorist activities. The court instructed him not to disclose the terms of his detention with anybody. Upon release, however, Abu Omar made two phone calls to his wife and a friend to report his kidnapping in Milan.

The calls were at the time wiretapped by both Italian and Egyptian authorities. Twenty days after his release, Abu Omar was then re-arrested in Alexandria (Egypt) on the basis of anti-terrorism measures and further detained (sometimes in solitary confinement) until 12 February 2007, when he was released on the condition that he would not leave Egypt.

In a criminal trial that started in 2007, Italian judicial authorities prosecuted a team of CIA operatives for the kidnapping of Abu Omar and his rendition to Egypt. On 4 November 2009, the Milan court convicted 23 American citizens ***in absentia*** for their actions in the Abu Omar **rendition**. One of the convicted persons in the case was Sabrina De Sousa, whose extradition case is reported in Part B of this book. During the proceedings, Italian authorities denied any direct involvement and knowledge of the rendition.

In a separate criminal case, Abu Omar was charged with international terrorism by an Italian court. He was tried in his absence and convicted to a six-year term of imprisonment. In 2015, the judgment against him was finally upheld by the Italian Supreme Court.

On 6 August 2009, Abu Omar filed an application against Italy with the European Court of Human Rights. His complaints included Italy's participation in the **rendition**, his **ill-treatment during the transfer** and throughout his detention and the failure to enforce the sentence passed on the convicted CIA agents. As in the case of Al Nashiri (which is reported in Part B of this book), the Strasbourg Court found a breach of both procedural and substantive aspects of Article 3 of the European Convention on Human Rights. Italy was also ordered to pay €70,000 in compensation to Abu Omar and €15,000 to his wife. The Court also found a violation of Article 5 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy).

Current developments

As of August 2019, Italy has not requested to Egypt the extradition of Abu Omar in relation to his 2015 conviction for terrorist activity. Abu Omar currently lives in Egypt.

Model Treaty on Extradition (1990)

Approved by the General Assembly of the United Nation at its 68th plenary meeting on 14 December 1990

The_____and the _____

Desirous of making more effective the co-operation of the two countries in the control of crime by concluding a treaty on extradition,

Have agreed as follows:

ARTICLE 1 | Obligation to extradite

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.

ARTICLE 2 | Extraditable offences

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least one/two year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least four/six months of such sentence remains to be served.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State.

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

ARTICLE 3 | Mandatory grounds for refusal

Extradition shall not be granted in any of the following circumstances:

(a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature;

(b) If the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punish-

ing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) If there has been a final judgement rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(e) If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

(f) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14;

(g) If the judgement of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.

ARTICLE 4 | Optional grounds for refusal

Extradition may be refused in any of the following circumstances:

(a) If the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(b) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;

(c) If a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(d) If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out;

(e) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) If the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

(h) If the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

ARTICLE 5 | Channels of communication and required documents

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following:

(a) In all cases,

(i) As accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

(ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(b) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;

(c) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(d) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to that State.

ARTICLE 6 | Simplified extradition procedure

The requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

ARTICLE 7 | Certification and authentication

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

ARTICLE 8 | Additional information

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

ARTICLE 9 | Provisional arrest

1. In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of 40 days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the 40 days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

ARTICLE 10 | Decision on the request

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

ARTICLE 11 | Surrender of the person

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present article shall apply.

ARTICLE 12 | Postponed or conditional surrender

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

ARTICLE 13 | Surrender of property

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

ARTICLE 14 | Rule of speciality

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(a) An offence for which extradition was granted;

(b) Any other offence in respect of which the requested State consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within 30/45 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

ARTICLE 15 | Transit

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby.

3. The State of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for 48 hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

ARTICLE 16 | Concurrent requests

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

ARTICLE 17 | Costs

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

ARTICLE 18 | Final provisions

1. The present Treaty is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of ratification, acceptance or approval are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

Extradition Treaty Between the United States of America and France (1996)

The President of the United States of America and the President of the French Republic,

Recalling the Extradition Treaty and accompanying Protocol between the United States of America and the Republic of France signed at Paris January 6, 1909 and the Supplementary Convention signed at Paris February 12, 1970 with Exchanges of Letters of June 2 and 11, 1970;

Noting that these treaties continue in force between the Government of the United States of America and the Government of the French Republic until entry into force of this Treaty; and

Desiring to provide for more effective cooperation between the two States in the suppression of crime and to facilitate relations between the two States in the area of extradition by concluding a treaty for the extradition of offenders;

Have decided to conclude a new extradition treaty and have appointed as their plenipotentiaries for this purpose: The President of the United States of America: The Honorable, Janet Reno, Attorney General of the United States of America; The President of the French Republic: The [*17] Honorable, Jacques Toubon, Minister of Justice;

Who, having communicated to each other their respective full powers, which were found in good and due form, have agreed as follows:

Article 1 | Obligation to Extradite

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the competent authorities in the Requesting State have charged with or found guilty of an extraditable offense.

Article 2 | Extraditable Offenses

1. Acts shall be extraditable if they are punished under the laws in both States by deprivation of liberty for a maximum of at least one year or by a more severe penalty. If extradition is requested for purposes of enforcing a judgment, the time remaining to be served must be at least six months.

2. An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, or participation in the commission of, an offense described in paragraph 1.

3. For the purposes of this Article, an offense shall be an extraditable offense:

(a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology; or [*18]

(b) whether or not the offense is one for which United States federal law requires proof or an element of proof, such as passage from one state to another, the use of the mails, wire, and other facilities of interstate or foreign commerce, or the effects upon such commerce, since such an element is required for the sole purpose of establishing the jurisdiction of United States federal courts.

4. Extradition shall be granted for an extraditable offense committed outside the territory of the Requesting State, when the laws of the Requested State authorize the prosecution or provide for the punishment of that offense in similar circumstances.

5. If the extradition request concerns distinct acts, each punishable under the laws of the two States by the deprivation of liberty, and if some of the acts do not fulfill the conditions set forth in Paragraphs 1 and 2 of this Article, the Requested State shall nonetheless grant extradition based upon such acts.

6. In matters concerning tax, customs duty, and foreign exchange offenses, extradition shall be granted pursuant to the terms set forth in paragraphs 1 and 2 of this Article.

Article 3 | Nationality

1. There is no obligation upon the Requested State to grant the extradition of a person who is a national of the Requested State, but the executive authority of the United States shall have the power to surrender a national of the United States if, in its discretion, it deems it proper to do so. The nationality of the person sought shall be the nationality of that person at the time the offense was committed.

2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution.

Article 4 | Political Offenses

1. Extradition shall not be granted by France when the when the offense for which extradition is requested is considered by France as a political offense or as an offense connected with a political offense or as an offense inspired by political motives. Extradition shall not be granted by the United States when the offense for which extradition is requested is considered by the United States to be a political offense.

2. For the purposes of this Treaty, and in accordance with paragraph 1 of this Article, the following offenses shall not be considered to be political offenses:

(a) a murder or a willful crime against the person of a Head of State of one of the Contracting States, or a member of his or her family, or any attempt or conspiracy to commit, or participation in, any of the foregoing offenses;

(b) an offense for which both Contracting States are obliged pursuant to a multilateral agreement to extradite the requested person or to submit the case to the competent authorities for decision as to prosecution;

(c) a serious offense involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

(d) an offense involving kidnapping, the taking of a hostage or any other form of unlawful detention; (e) an offense involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; or

(f) an attempt or conspiracy to commit, or participation in, any of the offenses listed in paragraphs 2(b), 2(c), 2(d) or 2(e) of this Article.

3. The Requested State may deny extradition of persons who committed any of the offenses mentioned in paragraphs 2(b), 2(c), 2(d), 2(e), and 2(f) of this Article pursuant to the provisions of paragraph 1 of this Article. In evaluating the character of the offense, the Requested State shall take into consideration the particularly serious nature of the offense, including: (a) that it created a collective danger to the life, physical integrity or liberty of persons; (b) that it affected

persons foreign to the motives behind it; or (c) that cruel or treacherous means have been used in the commission of the offense.

4. Extradition shall not be granted if the executive authority in the case of the United States or the competent authorities in the case of France have substantial grounds for believing that the request was for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinions.

Article 5 | Military Offenses

Extradition shall not be granted if the offense in respect of which it is requested is exclusively a military offense. Article 6 Humanitarian Considerations This Treaty does not prevent the executive authority in the case of the United States or the competent authorities in the case of France from denying extradition when surrender of the person might entail exceptionally serious consequences related to age or health.

Article 7 | Capital Punishment

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless the Requesting State provides the assurance that the death penalty will not be imposed or, if imposed, will not be carried out.

2. In instances in which a Requesting State provides the assurance in accordance with this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article 8 | Prior Prosecution

1. Extradition shall not be granted when the person sought has been finally convicted or acquitted in the Requested State for the offense for which extradition is requested.

2. Extradition shall not be refused on the grounds that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

Article 9 | Lapse of Time

1. Extradition shall be denied if prosecution of the offense or execution of the penalty has been barred by lapse of time under the laws of the Requested State.

2. Acts in the Requesting State that would interrupt or suspend the prescriptive period are to be taken into account by the Requested State to the extent possible under its laws.

Article 10 | Extradition Procedures and Required Documents.

1. All requests for extradition shall be submitted through the diplomatic channel.

2. All requests shall be supported by:

(a) documents, statements, or other types of information which state the nationality, probable location, and also describe the identity of the person sought in order to establish that the person is the subject of the prosecution or conviction;

(b) information describing the facts of the offense and the procedural history of the case;

(c) the text of the provisions describing the offense for which extradition is requested; and

(d) the text of the law prescribing the punishment for the offense.

3. A request for extradition of a person who is sought for prosecution shall also be supported by:

(a) in the case of a request submitted by the United States, a duly authenticated copy of the warrant or order of arrest and the charging document; or

(b) in the case of a request submitted by France, an original or a duly authenticated copy of the warrant or order of arrest and such information as would justify the committal for trial of the person if the offense had been committed in the United States.

4. A request for extradition relating to a person who has been found guilty or convicted of the offense for which extradition is sought shall also be supported by:

(a) in the case of a request by the United States, if the person has been convicted, the original or a duly authenticated copy of the final judgment of conviction, or, if the person has been found guilty but has not yet been sentenced, a statement by a judicial authority that the person has been found guilty, and a duly authenticated copy of the warrant of arrest;

(b) in the case of a request by France, the original or a duly authenticated copy of the final judgment of conviction;

(c) in all cases where a sentence has been imposed, a statement of the remainder of the sentence to be served; and

(d) in the case of a person who has been found guilty in absentia, the documents required by paragraph 3.

Article 11 | Admissibility of Documents

The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

(a) in the case of a request from the United States, they are transmitted through the diplomatic channel;

(b) in the case of a request from France, they are certified by the principal diplomatic or principal consular officer of the United States resident in France, as provided by the extradition laws of the United States, or they are certified or authenticated in any other manner accepted by the laws of the United States.

Article 12 | Translation

All documents submitted by the Requesting State shall be translated into the language of the Requested State.

Article 13 | Provisional Arrest

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted directly between the United States Department of Justice and the Ministry of Justice of the French Republic, by means of the facilities of the International Criminal Police Organization (INTERPOL), or through the diplomatic channel.

2. The application for provisional arrest shall contain:

(a) a description of the person sought and information concerning the person's nationality;

(b) the location of the person sought, if known;

(c) a brief statement of the facts of the case, including the location and approximate date of the offense;

(d) a description of the laws violated;

(e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and

(f) a statement that a request for extradition for the person sought will follow.

3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the Requested State has not received the formal request for extradition and the supporting documents required by Article 10.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 14 | Additional Information

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient to fulfill the requirements of this Treaty, that State may request that additional information be furnished within such reasonable length of time as it specifies. Such additional information may be requested and furnished directly between the United States Department of Justice and the Ministry of Justice of France or through the diplomatic channel.

2. If the person sought is under arrest for purposes of extradition and the additional information furnished is not sufficient or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting State from making another request in respect of the same or any other offense.

3. When the person is released from custody in accordance with paragraph 2, the Requested State shall notify the Requesting State as soon as practicable.

Article 15 | Decision and Surrender

1. The Requested State shall notify as soon as possible the Requesting State of its decision on the request for extradition.

2. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial. The Requested State shall provide copies of pertinent judicial decisions upon request.

3. If the request for extradition is granted, the authorities of the Contracting States shall agree on the date and place for the surrender of the person sought. The Requested State shall also notify the Requesting State of the length of time the person has spent in detention for purposes of extradition.

4. If the person sought is not removed from the territory of the Requested State within the time prescribed by its law in the case of the United States,

or in the case of France within 30 days from the date set for the surrender in accordance with paragraph 3 of this Article, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offense. 5. In the event circumstances beyond the control of either Contracting State prevent the surrender or reception of the person sought, the Contracting States shall agree on a new date for the surrender, and the provisions of paragraph 4 of this Article shall apply.

Article 16 | Temporary and Deferred Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Contracting States.

2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded and any sentence has been served. Article 17 Requests for Extradition Made by Several States If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the executive authority in the case of the United States and the competent authorities in the case of France shall determine to which State the person will be surrendered. In making its decision, the Requested State shall consider all relevant factors, including but not limited to: whether the requests were made pursuant to treaty; the place where each offense was committed; the respective interests of the requesting States; the gravity of the offenses; the nationality of the person sought and the victim; the possibility of further extradition between the requesting States; and the chronological order in which the requests were received from the requesting States.

Article 18 | Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender to the Requesting State all articles, documents, and evidence connected with the offense in respect of which extradition is granted. The articles, documents, and evidence mentioned in this Article may be surrendered even when the extradition cannot be effected because of the death, disappearance, or escape of the person sought.

2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State. 3. The rights of third parties in such property shall be duly respected.

Article 19 | Rule of Speciality

1. A person extradited under this Treaty shall not be detained, tried, convicted, punished, or subjected to any restriction of his freedom in the territory of the Requesting State for any act prior to the person's surrender, other than the offense for which extradition has been granted, except in the following cases:

(a) when the Requested State has given its consent. A request for such purpose may be submitted, together with the documents listed in Article 10, and any statements made by the person extradited concerning the offense for which the consent of the Requested State is requested; or

(b) when, having had the opportunity to do so, the person extradited did not leave the territory of the Requesting State within 30 days of his final release, or returned to the territory of the Requesting State after having left it.

2. If the denomination of the offense for which a person has been extradited is altered during the proceedings under the laws of the Requesting State or such a person is charged with a differently denominated offense, the person shall be prosecuted or sentenced provided the offense under its new legal description is:

(a) based on the same set of facts contained in the extradition request and its supporting documents; and

(b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offense for which he was extradited.

Article 20 | Reextradition to a Third State

1. When a person has been surrendered by the Requested State to the Requesting State, the Requesting State shall not surrender the person extradited to a third State for an offense prior to the person's surrender, unless:

(a) the Requested State consents to such surrender; or

(b) the person extradited, having had the opportunity to do so, did not leave the territory of the Requesting State within 30 days of the person's final release, or returned to the territory of the Requesting State after having left it.

2. Before granting a request under paragraph 1(a) above, the Requested State may request the documents referred to in Article 10, and any statements made by the person extradited with respect to the offense for which the consent of the Requested State is requested.

Article 21 | Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of the French Republic. The facilities of INTERPOL may also be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

2. No authorization is required where air transportation is being utilized by one Contracting State and no landing is scheduled on the territory of the other Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, that Contracting State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be

transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

Article 22 | Representation and Expenses

1. The Requested State shall advise and assist the Requesting State in connection with a request for extradition. Such advice and assistance shall be rendered in accordance with the provisions of the accompanying agreed minute, which shall form an integral part of this Treaty.

2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

Article 23 | Consultation

The United States Department of Justice and the Ministry of Justice of the French Republic may consult with each other directly or through the facilities of INTERPOL in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 24 | Application

1. This Treaty shall apply to offenses committed before as well as after the date it enters into force.

2. Upon the entry into force of this Treaty, the Treaty of Extradition between the United States of America and the Republic of France signed at Paris January 6, 1909 and the Supplementary Convention signed at Paris February 12, 1970 with Exchanges of Letters signed at Paris June 2 and 11, 1970, shall cease to have effect between the United States of America and the French Republic. Nevertheless, the 1909 Treaty, as supplemented in 1970, shall apply to any extradition proceedings in which extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force.

Article 25 | Ratification and Entry into Force

Each Contracting State shall notify the other of the completion of the constitutional procedures required for the ratification of this Treaty. The Treaty shall enter into force on the first day of the second month following the date of receipt of the last notification.

Article 26 | Termination

Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State through the diplomatic channel, and the termination shall be effective six months after the date of receipt of such notice.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Treaty. DONE at Paris, in duplicate, this 23rd day of April, 1996, in the English and French languages, both texts being equally authentic.

Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000(3), addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union acquis: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders(4) (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union(5) and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union(6).

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon

the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

(11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union(7), in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

(13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

(14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1 - GENERAL PRINCIPLES

Article 1 | Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2 | Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,

- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3 | Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4 | Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes,

duties and customs and exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 4a | Decisions rendered following a trial at which the person did not appear in person

(*inserted by Council Framework Decision 2009/299/JHA of 26 February 2009*)

1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

(a) in due time:

(i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial; and

(ii) was informed that a decision may be handed down if he or she does not appear for the trial; or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial; or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(i) expressly stated that he or she does not contest the decision; or

(ii) did not request a retrial or appeal within the applicable time frame; or

(d) was not personally served with the decision but:

(i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and

(ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

Article 5 | Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. ... (*repealed by Council Framework Decision 2009/299/JHA of 26 February 2009*);

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issu-

ing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6 | Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7 | Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8 | Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2 - SURRENDER PROCEDURE

Article 9 | Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10 | Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network(8), in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11 | Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12 | Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13 | Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14 | Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15 | Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16 | Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust(9) when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17 | Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18 | Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;

(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19 | Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20 | Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21 | Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing

Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22 | Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23 | Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24 | Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25 | Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

(a) the identity and nationality of the person subject to the European arrest warrant;

(b) the existence of a European arrest warrant;

(c) the nature and legal classification of the offence;

(d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply mutatis mutandis. In particular the expression "European arrest warrant" shall be deemed to be replaced by "extradition request".

CHAPTER 3 - EFFECTS OF THE SURRENDER

Article 26 | Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27 | Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28 | Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that,

in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(c) the decision shall be taken no later than 30 days after receipt of the request;

(d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29 | Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

(a) may be required as evidence, or

(b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Article 30 | Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4 - GENERAL AND FINAL PROVISIONS

Article 31 | Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agree-

ments or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 35 | Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Done at Luxembourg, 13 June 2002.